

1-21-2011

State v. Koivu Clerk's Record Dckt. 38106

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,

Plaintiff-Appellant,
vs.

RANDY PAUL KOIVU,

Defendant-Respondent.

Appealed from the District Court of the First Judicial
District of the State of Idaho, in and for Bonner County

HONORABLE BENJAMIN SIMPSON
District Judge

LAWRENCE G. WASDEN
Attorney for Petitioner

MOLLY HUSKEY
Attorney for Respondent

FILED - COBEN

JAN 21 2011

38106

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF BONNER

STATE OF IDAHO,)	
	)	SUPREME COURT DOCKET NO. 38106
Plaintiff-Appellant,)	
	)	CLERK'S RECORD ON APPEAL
vs.)	
)	
RANDY PAUL KOIVU,)	
)	
Defendant-Respondent.)	
_____)	

CLERK'S RECORD ON APPEAL

Appeal from the District Court of the First Judicial District of the State of Idaho, in and for
the County of Bonner.

HON. BENJAMIN SIMPSON
District Judge

MR. LAWRENCE G. WASDEN
ATTORNEY GENERAL
P.O. BOX 83720
BOISE, ID 83720-0010

ATTORNEY FOR PLAINTIFF

MS. MOLLY J. HUSKEY
STATE APPELLATE PUBLIC DEFENDER
3647 LAKE HARBOR LANE
BOISE, ID 83705

ATTORNEY FOR DEFENDANT

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Date: 3/10/2010

First Judicial District Court - Bonner County

User: PHILLIPS

Time: 03:41 PM

ROA Report

Page 1 of 5

Case: CR-2010-0001014 Current Judge: Benjamin R. Simpson

Defendant: Koivu, Randy Paul

State of Idaho vs. Randy Paul Koivu

Date	Code	User		Judge
3/5/2010	NCRF	FORELL	New Case Filed - Felony	Magistrate Court Clerks
	PROS	FORELL	Prosecutor assigned Shane L. Greenbank	Magistrate Court Clerks
	CMIN	FORELL	Court Minutes Hearing type: In Custody, 1st Arraignment Hearing date: 3/5/2010 Time: 1:18 pm Courtroom: Court reporter: Minutes Clerk: Jola Forell Tape Number: Ct Rm #2 Defense Attorney: Prosecutor: Shane Greenbank	Barbara Buchanan
	AFPC	FORELL	Affidavit Of Probable Cause	Barbara Buchanan
	CRCO	FORELL	Criminal Complaint	Barbara Buchanan
	ARRN	FORELL	Arraignment / First Appearance	Barbara Buchanan
	JLBS	FORELL	Jail Booking Sheet	Barbara Buchanan
	NOTR	FORELL	Notification of Rights	Barbara Buchanan
	APER	FORELL	Defendant: Koivu, Randy Paul Appearance Public Defenders	Barbara Buchanan
	JLIS	FORELL	Jail Information Sheet	Barbara Buchanan
	BSET	FORELL	BOND SET: at 50000.00	Barbara Buchanan
3/8/2010	HRSC	FORELL	Hearing Scheduled (Preliminary 03/17/2010 01:30 PM)	Barbara Buchanan
		FORELL	Notice of Hearing	Barbara Buchanan
	NOAP	TURNBULL	Notice Of Appearance, request for timely preliminary hearing, motion for bond reduction & notice of hearing	Barbara Buchanan
	RQFD	TURNBULL	Defendant's Request For Discovery	Barbara Buchanan
	BNDS	TURNBULL	Bond Posted - Surety (Amount 50000.00)	Barbara Buchanan
3/9/2010	NTDF	TURNBULL	Notice to Defendant	Barbara Buchanan
3/10/2010	RQFD	TURNBULL	Plaintiff's Request For Discovery	Barbara Buchanan
	RRFD	TURNBULL	Plaintiff's Response To Request For Discovery	Barbara Buchanan
	DRCQ	AYERLE	Driving Record Requested	Barbara Buchanan
3/11/2010	RQFD	TURNBULL	Defendant's First Supplemental Request For Discovery	Barbara Buchanan
	RRFD	TURNBULL	Defendant's Response To Request For Discovery	Barbara Buchanan
3/12/2010	SUBC	TURNBULL	Substitution Of Counsel, Whitney to Payne	Barbara Buchanan
	NOAP	TURNBULL	Notice Of Appearance, request for timely preliminary hearing, motion for bond reduction & notice of hearing	Barbara Buchanan
	RQFD	TURNBULL	Defendant's Request For Discovery	Barbara Buchanan
	DRCD	AYERLE	Driving Record	Barbara Buchanan

Document sealed

-/-

State of Idaho vs. Randy Paul Koivu

Date	Code	User		Judge
3/16/2010	RRFD	TURNBULL	Plaintiff's Supplemental Response To Request For Discovery	Barbara Buchanan
3/17/2010	RRFD	TURNBULL	Plaintiff's Supplemental Response To Request For Discovery	Barbara Buchanan
	CTLG	AYERLE	Court Log- 3	Barbara Buchanan
	OADC	AYERLE	Order Holding Defendant To Answer To District Court	Barbara Buchanan
	INFO	AYERLE	Information	Barbara Buchanan
	CMIN	AYERLE	Court Minutes Hearing type: Preliminary Hearing date: 3/17/2010 Time: 1:50 pm Courtroom: Court reporter: Minutes Clerk: Susan Ayerle Tape Number: 3 Defense Attorney: Linda Payne Prosecutor: Shane Greenbank	Barbara Buchanan
	PHWV	AYERLE	Hearing result for Preliminary held on 03/17/2010 01:30 PM: Preliminary Hearing Waived (bound Over)	Barbara Buchanan
	HRSC	AYERLE	Hearing Scheduled (Arraignment/District Court 04/05/2010 09:00 AM)	Steve Verby
	MODQ	OPPELT	Motion To Disqualify Pursuant to I.C.R. 25 - Judge Verby	Steve Verby
3/18/2010	MODQ	OPPELT	Motion To Disqualification Without Cause Pursuant to Idaho Criminal Rule 25(a) - Judge Mitchell - Alternate Judge	John T. Mitchell
3/19/2010	ORDQ	OPPELT	Order To Disqualification Without Cause Pursuant to Idaho Criminal Rule 25(a) - Judge Mitchell - Alternate Judge	John T. Mitchell
	DISA	OPPELT	Disqualification Of Judge - Automatic - Judge Mitchell - Alternate Judge	John T. Mitchell
3/22/2010	ORDQ	CMOORE	Order Disqualifying Judge (Verby)	Steve Verby
	DISF	CMOORE	Disqualification of Judge Verby - Self	Steve Verby
	CHJG	CMOORE	Change Assigned Judge	District Court Clerks
	HRVC	CMOORE	Hearing result for Arraignment/District Court held on 04/05/2010 09:00 AM: Hearing Vacated - May be reset upon reassignment of judge	Steve Verby
3/29/2010	ORDR	OPPELT	Order of Reassignment	John T. Mitchell
	CHJG	OPPELT	Change Assigned Judge	Benjamin R. Simpson
	HRSC	OPPELT	Hearing Scheduled (Arraignment/District Court 04/26/2010 03:30 PM)	Benjamin R. Simpson
		OPPELT	Notice of Hearing	Benjamin R. Simpson
4/21/2010	SUPR	OPPELT	Plaintiff's Supplemental Response To Request For Discovery	Benjamin R. Simpson

State of Idaho vs. Randy Paul Koivu

Date	Code	User	Judge
4/26/2010	CMIN	OPPELT	Court Minutes Hearing type: Arraignment/District Court Hearing date: 4/26/2010 Time: 3:55 pm Courtroom: 1 Court reporter: Joann Schaller Minutes Clerk: Linda Oppelt Defense Attorney: Linda Payne Prosecutor: Shane Greenbank Benjamin R. Simpson
	DCHH	OPPELT	Hearing result for Arraignment/District Court held on 04/26/2010 03:30 PM: District Court Hearing Held Court Reporter: Joann Schaller Number of Transcript Pages for this hearing estimated: Less Than 100 Pages Benjamin R. Simpson
	ARRN	OPPELT	Hearing result for Arraignment/District Court held on 04/26/2010 03:30 PM: Arraignment / First Appearance Benjamin R. Simpson
	PNGJ	OPPELT	Hearing result for Arraignment/District Court held on 04/26/2010 03:30 PM: Plea of Not Guilty, Set for Jury Trial Benjamin R. Simpson
	PLEA	OPPELT	A Plea is entered for charge: - NG (137-2732(C)(1) Controlled Substance-Possession of) Benjamin R. Simpson
4/29/2010	HRSC	OPPELT	Hearing Scheduled (Status Conference 06/28/2010 02:30 PM) Benjamin R. Simpson
		OPPELT	Notice of Hearing Benjamin R. Simpson
5/27/2010	CONT	OPPELT	Hearing result for Status Conference held on 06/28/2010 02:30 PM: Continued Benjamin R. Simpson
	HRSC	OPPELT	Hearing Scheduled (Status Conference 06/28/2010 01:30 PM) Benjamin R. Simpson
		OPPELT	Amended Notice of Hearing (Time of Hearing Changed) Benjamin R. Simpson
6/8/2010	FIOC	OPPELT	File Out Of County Benjamin R. Simpson
6/28/2010	CMIN	AYERLE	Court Minutes Hearing type: Status Conference Hearing date: 6/28/2010 Time: 2:21 pm Courtroom: Court reporter: Minutes Clerk: Susan Ayerle Tape Number: 1 Defense Attorney: Linda Payne Prosecutor: Shane Greenbank Benjamin R. Simpson
	DCHH	OPPELT	Hearing result for Status Conference held on 06/28/2010 01:30 PM: District Court Hearing Held Court Reporter: Val Larson Number of Transcript Pages for this hearing estimated: Less Than 100 Pages Benjamin R. Simpson
	FIRT	OPPELT	File Returned Benjamin R. Simpson

State of Idaho vs. Randy Paul Koivu

Date	Code	User		Judge
7/8/2010	HRSC	OPPELT	Hearing Scheduled (Status Conference 07/27/2010 09:00 AM)	Benjamin R. Simpson
		OPPELT	Notice of Hearing	Benjamin R. Simpson
7/9/2010	MISC	PHILLIPS	Authority in Support of Motion to Suppress	Benjamin R. Simpson
7/13/2010	NOFH	PHILLIPS	Notice Of Hearing - Sept 1, 2010	Benjamin R. Simpson
	HRSC	PHILLIPS	Hearing Scheduled (Hearing Scheduled 09/01/2010 03:00 PM) Def's Motion to Suppress; Kootenai County	Benjamin R. Simpson
7/15/2010	FIOC	OPPELT	File Out Of County - Judge Simpson	Benjamin R. Simpson
7/20/2010	WAIV	OPPELT	Waiver Of Speedy Trial	Benjamin R. Simpson
	STIP	OPPELT	Stipulation to Vacate Status Conference	Benjamin R. Simpson
	ORDR	OPPELT	Order Vacating Status Conference	Benjamin R. Simpson
	HRVC	OPPELT	Hearing result for Status Conference held on 07/27/2010 09:00 AM: Hearing Vacated	Benjamin R. Simpson
7/26/2010	FIRT	OPPELT	File Returned	Benjamin R. Simpson
8/16/2010	FIOC	OPPELT	File Out Of County - Judge Simpson	Benjamin R. Simpson
8/19/2010	RESP	CMOORE	State's Response to Defendant's Motion to Suppress	Benjamin R. Simpson
	STIP	CMOORE	Stipulations for Hearing on Defendant's Motion to Suppress	Benjamin R. Simpson
8/30/2010	STIP	OPPELT	Stipulation to Forgo Oral Argument on Defendant's Motion to Suppress	Benjamin R. Simpson
9/1/2010	HRVC	OPPELT	Hearing result for Motion to Suppress held on 09/01/2010 03:00 PM: Vacated	Benjamin R. Simpson
	GRNT	OPPELT	Hearing result for Motion to Suppress held on 09/01/2010 03:00 PM: Motion Granted Kootenai County	Benjamin R. Simpson
9/8/2010	FIRT	OPPELT	File Returned	Benjamin R. Simpson
9/14/2010	HRSC	OPPELT	Hearing Scheduled (Status Conference 10/25/2010 01:30 PM)	Benjamin R. Simpson
		OPPELT	Notice of Hearing	Benjamin R. Simpson
9/17/2010	NOTC	PHILLIPS	Notice of Appeal	Benjamin R. Simpson
	APSC	PHILLIPS	Appealed To The Supreme Court	Benjamin R. Simpson
9/28/2010	CINF	PHILLIPS	Clerk Information - had to place on reopen status, as ISTARs automatically put as inactive, but a hearing is set in front of Simpson, so want to keep on Open Status. No administrator available to enter password to revert to prior status	Benjamin R. Simpson
	CCOA	PHILLIPS	Clerk's Certificate Of Appeal	Benjamin R. Simpson
	MISC	PHILLIPS	sending Clerk's Certificate and certified documents to Supreme Court	Benjamin R. Simpson
10/14/2010	FIOC	OPPELT	File Out Of County - Judge Simpson	Benjamin R. Simpson

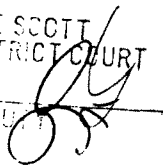
State of Idaho vs. Randy Paul Koivu

Date	Code	User		Judge
10/20/2010	NOTC	SMITH	Notice of appeal filed ISC 10/1/10 - Docket no. 38106-2010; due attorneys 11/01/2010; due Supreme Court 12/06/2010	Benjamin R. Simpson
	MOTN	SMITH	Motion for appointment of state appellate public defender	Benjamin R. Simpson
	ORDR	SMITH	Order appointing state appellate public defender	Benjamin R. Simpson
	ORPD	PHILLIPS	Defendant: Koivu, Randy Paul Order Appointing Public Defender Court appointed Molly Huskey	Benjamin R. Simpson
10/25/2010	DCHH	OPPELT	Hearing result for Status Conference held on 10/25/2010 01:30 PM: District Court Hearing Held Court Reporter: Joann Schaller Number of Transcript Pages for this hearing estimated: Less Than 100 Pages	Benjamin R. Simpson
	ADVS	OPPELT	Hearing result for Status Conference held on 10/25/2010 01:30 PM: Case Taken Under Advisement	Benjamin R. Simpson
	CMIN	OPPELT	Court Minutes Hearing type: Status Conference Hearing date: 10/25/2010 Time: 1:33 pm Courtroom: 1 Court reporter: Joann Schaller Minutes Clerk: Linda Oppelt Defense Attorney: Linda Payne Prosecutor: Shane Greenbank	Benjamin R. Simpson
10/27/2010	ORDR	OPPELT	Order Denying Stay on Appeal	Benjamin R. Simpson
10/28/2010	MISC	SMITH	Miscellaneous - Document filed ISC - Order Appointing State Appellate Public Defender	Benjamin R. Simpson
11/1/2010	MISC	PHILLIPS	"Clerk's Certificate Filed" - received Clerk's Certificate of Appeal back from Supreme Court	Benjamin R. Simpson
11/2/2010	HRSC	OPPELT	Hearing Scheduled (Pretrial Conference 01/24/2011 01:30 PM)	Benjamin R. Simpson
	HRSC	OPPELT	Hearing Scheduled (Jury Trial - 3 Days 01/25/2011 09:00 AM)	Benjamin R. Simpson
		OPPELT	Notice of Trial	Benjamin R. Simpson
11/8/2010	MISC	PHILLIPS	Notice from Supreme Court - document filed - State's Motion to Stay Underlying Proceedings	Benjamin R. Simpson

ORIGINAL

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DISTRICT

2010 MAR -5 P 1:25

MARIE SCOTT
CLERK DISTRICT COURT


BONNER COUNTY PROSECUTING ATTORNEY
127 S. First Avenue
Sandpoint, ID 83864
(208) 263-6714
(208) 263-6726 (facsimile)

Assigned Prosecutor:
SHANE GREENBANK

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER**

STATE OF IDAHO Plaintiff, v. RANDY PAUL KOIVU, DOB: [REDACTED] SSN: [REDACTED] Defendant.	Case NO: CR-2010-1014 CRIMINAL COMPLAINT AGENCY: BCSO
---	---

COMES NOW, Shane Greenbank, and being first duly sworn under oath, and complains that the above named defendant did commit the crime of: **POSSESSION OF A CONTROLLED SUBSTANCE, METHAMPHETAMINE**, a Felony, I.C. §37-2732(c)(1), and §19-2514, committed as follows:

That the Defendant, **RANDY PAUL KOIVU**, on or about the 5th day of March, 2010, in the County of Bonner, State of Idaho, did knowingly possess a controlled substance, to-wit: Methamphetamine, a Schedule II controlled substance.

All of which is contrary to the form of the statute in such cases made and provided and against the peace and dignity of the State of Idaho.

WHEREFORE, Complainant prays that the Defendant be dealt with according to law.

DATED this 5th day of March, 2010.



**SHANE GREENBANK, DPA
COMPLAINANT**

SUBSCRIBED AND SWORN to before me this 5 day of March, 2010.



MAGISTRATE OF THE DISTRICT COURT

PART II

The Prosecuting Attorney further informs the Court that while committing the Felony offense alleged above, the defendant, **RANDY PAUL KOIVU**, had been previously convicted of two (2) separate felony offenses and, pursuant to I.C. §19-2514, is properly considered a persistent violator. Defendant's previous convictions consist of the following felony offenses:

- 1) On or about the 26th day of August, 2002, a judgment of guilty was entered in the State of Idaho, County of Boundary, in Case No. CR-2002-92 for the Felony offense of: BURGLARY.
- 2) On or about the 6th day of January, 2004, a judgment of guilty was entered in the State of Idaho, County of Boundary, in Case No. CR-2003-677 for the Felony offense of: POSSESSION OF A CONTROLLED SUBSTANCE.

All of which is contrary to the form, force and effect of the statute in such case made and provided and against the peace and dignity of the People of the State of Idaho.

DATED this 5TH day of March, 2010.



SHANE GREENBANK, ISB# 7845
Deputy Prosecuting Attorney

ORIGINAL

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DISTRICT

2010 MAR -5 P 1:25

MARIE SCOTT
CLERK DISTRICT COURT

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF BONNER

STATE OF IDAHO

Plaintiff,

v.

RANDY PAUL KOIVU,

DOB: [REDACTED]

SSN: [REDACTED]

Defendant.

Court Case Number(s): CR- 2010-1014

PROBABLE CAUSE AFFIDAVIT

Incident #:10-003169

I, Deputy B. Martin, the undersigned, being first duly sworn on oath, depose and say that:

- 1) I am a duly appointed, qualified, and acting peace officer in the State of Idaho and am employed by Bonner County Sheriff's Office;
- 2) I am the same person whose name is subscribed to the attached Citation(s), if any.
- 3) The Defendant was identified by:
☐ Military ID ☐ State ID Card ☐ Student ID Card ☐ Credit Card
☒ Driver's License ☐ Paperwork found ☐ Verbal ID by defendant
☐ Identified by witness: _____.
- 4) The Defendant is currently:
☐ not in custody.
☒ in custody.
- 5) I believe that there is probable cause to believe the defendant committed the crime(s) of Possession of a Controlled Substance (Methamphetamine), a Felony per I.C. 37-2732(c)(1). because of the following facts:

[NOTE: You must 1) clearly articulate the facts regarding *every* element of the offense(s) for which you believe PC exists; 2) why it is believed that the Defendant committed the offense(s); and 3) state the source of all information provided – stating what you observed and what you learned from someone else, and identifying such persons below].

On 03-05-2010, at approximately 0146 hours, Deputy Deal and myself were riding together in his patrol car for the night. We were running radar at the Conoco gas station at the north end of the long bridge. We noticed a vehicle traveling northbound at a high rate of speed. I visually estimated the vehicle to be traveling at 40 MPH in a posted 25 MPH zone. Deputy Deal confirmed with radar that the vehicle was traveling at 38 MPH.

A traffic stop for speeding was initiated and the occupants were contacted. The driver was identified as Randy Koivu by his Idaho Drivers license. Also in the vehicle was Jason Bilbo and Chad Tompkins.

Dispatch advised that Koivu had a misdemeanor warrant and Bilbo had a felony warrant. Both warrants were confirmed by dispatch, and Koivu and Bilbo were taken into custody on the warrants and transported to the Bonner County jail.

When we arrived at the jail, I handed Koivu over to the jail staff, Deputy Miller and Deputy Van Pelt. I stood by as Deputy Van Pelt had started his search. I noted that prior to the search, the floor at Koivu's feet was clear of any foreign objects. As Koivu was removing his socks, Deputy Van Pelt noticed a small clear plastic bag with black tape on the floor at Koivu's feet. I asked Koivu what it was, he responded that he did not know. Koivu said it must have been stuck to his shoe. I picked the bag up from the floor and could tell it was some kind of controlled substance.

[If a drug offense has been committed, briefly explain your training, experience and qualifications to identify the substance and/or paraphernalia at issue]
Drug recognition and NIK test training from POST academy.

[If a drug offense has been committed, explain what tests were performed and what the results were]

At my request, Deputy Deal retrieved a Methamphetamine test kit from his vehicle. The kit was a NARK II, a product of the Sirchie Group. The test was performed and the result showed positive for Methamphetamine.

- 6) The events described above, which give rise to the criminal offenses believed to have been committed, occurred on or about the date(s) of 03-05-2010, in:
- ☒ The City of _____, County of Bonner, State of Idaho;
☒ Bonner County, State of Idaho.
- 7) Based on the investigation detailed above (complete all that apply):
- ☐ Uniform Citation number _____ was issued to the Defendant for the offense(s) of _____.
☐ Uniform Citation number _____, attached hereto, has not been served on the defendant,
☐ A Complain/Summons is requested.
☐ An Arrest Warrant is requested because: _____.
☒ A request for the filing of a Criminal Complaint has been made upon the Prosecutor's Office for the offense(s) of: Possession of a Controlled Substance (Methamphetamine), a Felony per I.C. 37-2732(c)(1).
- 8) The following documents are attached hereto and are incorporated by reference:
- ☐ Copy of Protection Order ☐ Copy of NCO ☐ _____

STATE OF IDAHO)
) ss.
COUNTY OF BONNER)

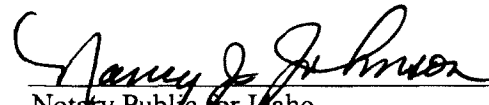
By my signature, and in the presence of a person authorized to administer Oaths in the State of Idaho, I hereby solemnly swear that the information contained in this document and attached reports and

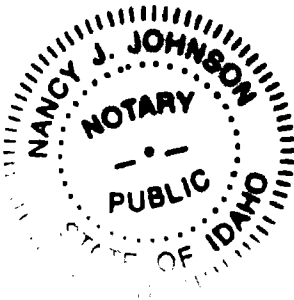
documents that may be included herein truth, the whole truth, and nothing but the truth, to the best of my information and belief.

DATED this 5 day of MARCH, 2010.


AFFIANT

SUBSCRIBED AND SWORN to before me this 5th day of March, 2010.


Notary Public for Idaho
Sandpoint, Idaho
Residing in
10-15-2010
Commission Expires



ORDER

The above-named Defendant having been charged with, or arrested for, the offense(s) of: Possession of a Controlled Substance (Methamphetamine), a Felony per I.C. 37-2732(c)(1), and the court having examined the affidavit of Deputy B. Martin, and any attached documentation, the Court finds a substantial and factual basis for believing that the offense(s) has/have been committed and that the Defendant committed it/them.

WHEREFORE, IT IS HEREBY ORDERED that

- ☐ a Criminal Summons may be issued for the above-named Defendant, giving the Defendant a date certain to appear before the Court.
- ☐ a Warrant may be issued for the arrest of the above-named Defendant, or, if he has been arrested without warrant, that the Defendant may be detained and that he may be required to post bail prior to his release.

DATED this 5 day of March, 2010



MAGISTRATE COURT JUDGE

STATE OF IDAHO, COUNTY OF BONNER VS

NAME: RANDY P. KOIVU

CASE #:

CR- 2010-1014
CR-2003-677 (BOUNDARY CO)

NOTIFICATION OF RIGHTS:

CASE CALLED 109,118 to 119,121 DATE: 3-5-10 TIME: 1:15 P. M.

CR TM: #2

JUDGE: BUCHANAN

CLERK: FORELL

APPEARANCES - 1ST ON FE & BOUNDARY FTP WARRANT

☒ Defendant IN CUSTODY VIA VIDEO ☐ Other
☐ Def Attorney ☐ Pros. Attorney SHANE GREENBANK

FAILURE TO APPEAR:

☐ Defendant having failed to appear, and good cause not shown for such absence

IT IS ORDERED:

☐ Bench Warrant Issued \$ Bond ☐ Bond Forfeited
☐ Referred to Prosecuting Attorney for probable cause to issue arrest warrant

PROCEEDINGS AND ADVISEMENT OF RIGHTS:

CHARGE AMENDED:

☒ Defendant is informed of the charges against him/her and all legal rights, including the right to be represented by counsel.
☒ Defendant advised of maximum penalties and penalties for subsequent violations.
☐ Defendant waives right to counsel and understands ☐ Hire own attorney.
☒ Defendant sworn.
☒ Public Defender appointed: BCPD
☐ Court denies court appointed counsel. ☐ Defendant waives right to Public Defender
☐ Matter continued to: at

PRELIMINARY HEARING:

☐ Statutory time waived ☐ Preliminary hearing waived
☒ Set preliminary hearing ☒ 14 days ☐ 21 days

☐ JUDGE ENTERS PLEA OF NOT GUILTY
☐ Set for Pre-Trial Conference and Jury Trial

☐ Set for Court Trial

ENTRY OF GUILTY PLEA:

☐ Defendant enters plea freely and voluntarily with knowledge of consequences.
☐ Defendant is advised of rights waived on plea of guilty and understands
☐ Defendant denies that any threats or promises have been made.
☐ Pleas of guilty accepted by the court
☐ Set for SENTENCING on: at Judge:
☐ Defendant ordered to obtain alcohol evaluation prior to sentencing date

BAIL:

☐ Released on own recognizance ☒ bail set at: \$ 588.50 Case/cnt: CR-2003-677
☐ Remanded to the custody of the Sheriff \$ 50,000.00 Case/cnt: CR-2010-1014
☐ Released on bond previously posted \$ Case/cnt:
☐ Warrant of Attachment \$ Days jail in lieu of fine/costs

INDEX	SPEAKER	PHASE OF CASE

-13-

BONNER COUNTY PUBLIC DEFENDER

Janet K. Whitney (ISBN: 6624)

406 South Ella Street

Sandpoint, Idaho 83864

Phone: (208) 255-7889; Fax: (208) 255-7559

STATE OF IDAHO
COUNTY OF BONNER
DISTRICT JUDICIAL DISTRICT

2010 MAR -8 P 1:56

MARIE SCOTT
CLERK DISTRICT COURT

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER
MAGISTRATE DIVISION**

STATE OF IDAHO,

Plaintiff,

V.

RANDY P. KOIVU,

Defendant.

CASE NUMBER CR-10-0001014

NOTICE OF APPEARANCE,
REQUEST FOR TIMELY
PRELIMINARY HEARING,
MOTION FOR BOND REDUCTION
& NOTICE OF HEARING

COMES NOW the Office of the Bonner County Public Defender, and pursuant to court appointment hereby appears for and on behalf of the above named defendant in the above entitled matter, and requests that a preliminary hearing be scheduled in accordance with the time limits set forth in Idaho Criminal Rule 5.1.

Counsel hereby moves for reduction of the bond set in this matter on the grounds that it is excessive, and further, **notice is hereby given** that counsel will present argument in support of the motion to reduce bond at the time of the preliminary hearing scheduled in this matter if the defendant is in custody.

Notice is given that the Defendant herewith asserts all rights accorded him or her under the Fifth, Sixth, and Fourteenth Amendments to the Constitution of the United States and under Article I, § 13 of the Constitution of the State of Idaho and all prophylactic measures imposed

**NOTICE OF APPEARANCE, REQUEST FOR TIMELY PRELIMINARY HEARING,
MOTION FOR BOND REDUCTION & NOTICE OF HEARING**

Page 1

-14-

upon the State pursuant to said constitutional provisions; including, but not necessarily limited to, the right to remain silent and the right to counsel.

Notice is further given that the Defendant herewith demands and asserts all State and federal statutory and constitutional rights to speedy trial of this matter.

DATED this 8th day of March, 2010.

OFFICE OF THE BONNER
COUNTY PUBLIC DEFENDER

BY: Janet Whitney
JANET K. WHITNEY
CHIEF DEPUTY PUBLIC DEFENDER

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing was personally served by placing a copy of the same in the interoffice mailbox on the 8th day of March, 2010, addressed to:

Shane Greenbank
Deputy Prosecuting Attorney

Rundsey Ducken

Linda J. Payne
 Attorney at Law
 P.O. Box 1017
 Coeur d'Alene, Idaho 83816
 (208) 665-1303; (208) 255-7555
 (208) 667-8292 FAX
 ISB#6222

STATE OF IDAHO
 COUNTY OF BONNER
 FIRST JUDICIAL DISTRICT

2010 MAR 12 A 11:18

CLERK OF DISTRICT COURT

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER**

STATE OF IDAHO,

Plaintiff,

vs.

RANDY PAUL KOIVU,

Defendant.

CASE NO. CR-2010-1014

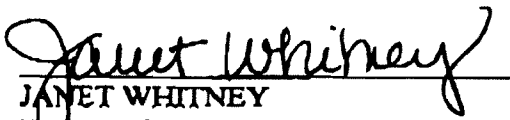
SUBSTITUTION OF COUNSEL

NOTICE IS HEREBY GIVEN that Linda J. Payne, Attorney at Law, shall be and hereby is substituted as counsel of record for the above-named defendant, in the place and stead of JANET WHITNEY and the BONNER COUNTY PUBLIC DEFENDER'S OFFICE.


Any and all further notices and pleadings should be addressed and delivered to said attorney, Linda J. Payne, at the address stated above.

DATED this 12 day of March, 2010.

BONNER COUNTY PUBLIC
 DEFENDER OFFICE


 JANET WHITNEY
 Withdrawing Attorney

BY:


 LINDA J. PAYNE
 Substituting Attorney


NOTICE OF SUBSTITUTION OF COUNSEL - 1

CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the foregoing this 12 day of March, 2010, by placing a copy of same in the Courthouse Mailbox of:

Bonner County Prosecuting Attorney

Bonner County Public Defender

_____

STATE OF IDAHO
COUNTY OF BONNER
JUDICIAL DISTRICT

2010 MAR 12 A 11:38

MARIE SCOTT
CLERK DISTRICT COURT

ORIGINAL

LINDA J. PAYNE
ATTORNEY AT LAW
P.O. BOX 1017
COEUR D'ALENE, IDAHO 83816
(208) 665-1303; 255-7555
(208) 667-8292 FAX
ISB #6222

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

STATE OF IDAHO,)	
	)	CASE NO. CR-2010-1014
Plaintiff,)	
	)	NOTICE OF APPEARANCE
vs.	)	REQUEST FOR TIMELY
	)	PRELIMINARY HEARING,
RANDY PAUL KOIVU,	)	MOTION FOR BOND REDUCTION
	)	& NOTICE OF HEARING
Defendant.)	
_____)	

COMES NOW, LINDA J. PAYNE, Attorney at Law hereby appears for and on behalf of the above named defendant in the above entitled matter, and requests that a preliminary hearing be scheduled in accordance with the time limits set forth in Idaho Criminal Rule 5.1.

Counsel hereby moves for reduction of the bond set in this matter on the grounds that it is excessive, and further, **notice is hereby given** that counsel will present argument in support of the motion to reduce bond at the time of the preliminary hearing scheduled in this matter if the defendant is in custody.

Notice is given that the Defendant herewith asserts all rights accorded him or her under the Fifth, Sixth, and Fourteenth Amendments to the Constitution of the United States and under Article I, § 13 of the Constitution of the State of Idaho and all prophylactic measures imposed


NOTICE OF APPEARANCE, REQUEST FOR TIMELY
PRELIMINARY HEARING, MOTION FOR BOND
REDUCTION & NOTICE OF HEARING - 1

-18-

upon the State pursuant to said constitutional provisions; including, but not necessarily limited to, the right to remain silent and the right to counsel. NO AGENT OF THE STATE OR PERSON ACTING IN SUCH CAPACITY IS TO QUESTION THE DEFENDANT IN REGARD TO ANY ACT, WHETHER CHARGED OR UNCHARGED.

Notice is further given that the Defendant herewith demands and asserts all State and federal statutory and constitutional rights to speedy trial of this matter.

DATED this 12 day of March, 2010.

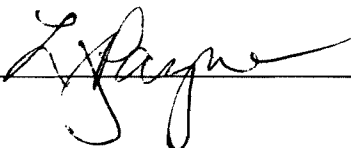
By 
LINDA J. PAYNE
Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on the 12 day of March, 2010, I caused a true and correct copy of the foregoing document to be served upon the following person in the following manner:

Shane Greenbank, Dep. PA Bonner Co.

- ☐ U.S. Mail, Postage Prepaid
- ☐ Overnight Mail
- ☐ Hand delivered
- ☐ Facsimile No. _____
- ☒ Courthouse Mail
- ☐ Other: _____

By 

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

COURT MINUTES

JUDGE: BARBARA A BUCHANAN
DIVISION: MAGISTRATE COURT
CLERK: SUSAN AYERLE

CASE NO. CR-2010-1014
DATE: MAR 17 2010 TIME: 1:30 PM
CRTRM: 3

STATE OF IDAHO

vs RANDY PAUL KOIVU

Plaintiff / Petitioner

Defendant / Respondent

Atty: SHANE GREENBANK

Atty: PUBLIC DEFENDER

SUBJECT OF PROCEEDINGS
CHARGE

PRELIMINARY HEARING

INDEX	SPEAKER	PHASE OF CASE
150		Calls Case
		Present: DEF WITH LINDA PAYNE; SHANE GREENBANK FOR STATE
	J	CHARGE
	LP	PREPARED TO WAIVE PRELIMINARY HEARING HAVE DISCUSSED AGREED TO WAIVE
	J	UNDERSTAND
	DEF	YES
	J	QUESTIONS
	DEF	NO
	J	ACCEPT WAIVER ADVISE AND ASSISTANCE OF COUNSEL RELEASE CONTINUES ON BOND APRIL 5 TH AT 9 AM TO ENTER PLEA MAKE SURE YOU'RE HERE
	SG	INFORMATION FILED
152		END

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF BONNER, MAGISTRATE DIVISION

STATE OF IDAHO,

Plaintiff,

vs.

RANDY PAUL KOIVU

DOB: [REDACTED]

Defendant.

Case No. CR-2010-1014
STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DISTRICT
ORDER HOLDING
DEFENDANT TO ANSWER
2010 MAR 17 P 2:00

CLERK DISTRICT COURT

DEPUTY

Preliminary Hearing having been:

- ☒ waived,
☐ held in this case on the _____ day of _____, 2010,
☐ waived, the Defendant having entered a plea of GUILTY and executing the same in writing, a copy of which is on file herein;

and the Court being fully satisfied that a public offense has been committed, and that there is probable or sufficient cause to believe the defendant guilty thereof;

IT IS HEREBY ORDERED that defendant be held to answer to the District Court of the First Judicial District of the State of Idaho, in and for the County of Bonner, to the charge(s) of: POSSESSION OF A CONTROLLED SUBSTANCE, METHAMPHETAMINE, IC §§37-2732(c)(1), 19-2514

a felony committed in Bonner County, Idaho,

- ☐ on or about the 5th day of March, 2010,
☐ between the _____ day of _____, 20____, and the _____ day of _____, 20____.

IT IS FURTHER ORDERED that:

- ☒ Defendant appear for ARRAIGNMENT on April 5, 10, at 9:00 a.m.;
☒ A Presentence Investigation be conducted; Defendant is to contact Probation & Parole within five (5) days of the date herein and APPEAR FOR SENTENCING IN DISTRICT COURT on the _____ day of _____, 20____, at _____ m.;

In the courtroom of the above entitled Court, before the Honorable Steven C. Verby.

IT IS FURTHER ORDERED that:

- ☒ Defendant's release is continued on the bond posted.
☒ Defendant's release on his own recognizance is continued.
☐ YOU, THE SHERIFF OF BONNER COUNTY, IDAHO, are commanded to receive him/her, the said defendant, into your custody and detain him/her until he/she is legally discharged. Defendant is to be admitted to bail in the sum of \$_____.

DATED this 17 day of March, 2010.

Bah
Magistrate

COPIES TO: [] PROS ATTY [] DFT [] ATTORNEY FOR DFT. [] BCSO [] PROB/PAROLE

DATE: 3-17-10 -21- [Signature], Deputy Clerk

ORDER HOLDING DEFENDANT TO ANSWER

7/09

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DISTRICT

2010 MAR 17 P 2:00

SHANE SCOTT
CLERK DISTRICT COURT
DEPUTY

BONNER COUNTY PROSECUTING ATTORNEY

127 S. First Avenue
Sandpoint, ID 83864
(208) 263-6714
(208) 263-6726 (facsimile)

Assigned Prosecutor:
SHANE GREENBANK

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER**

STATE OF IDAHO

Plaintiff,

v.

RANDY PAUL KOIVU,

DOB: [REDACTED]

SSN: [REDACTED]

Defendant.

Case NO: **CR-2010-1014**

INFORMATION

AGENCY: BCSO

COMES NOW, Shane Greenbank, and complains that the above named defendant did commit the crime of: **POSSESSION OF A CONTROLLED SUBSTANCE, METHAMPHETAMINE**, a Felony, I.C. §37-2732(c)(1), and §19-2514, committed as follows:

That the Defendant, **RANDY PAUL KOIVU**, on or about the 5th day of March, 2010, in the County of Bonner, State of Idaho, did knowingly possess a controlled substance, to-wit: Methamphetamine, a Schedule II controlled substance.

PART II

The Prosecuting Attorney further informs the Court that while committing the Felony offense alleged above, the defendant, **RANDY PAUL KOIVU**, had been previously convicted of two (2) separate felony offenses and, pursuant to I.C. §19-2514, is properly considered a persistent violator. Defendant's previous convictions consist of the following felony offenses:

- 1) On or about the 26th day of August, 2002, a judgment of guilty was entered in the State of Idaho, County of Boundary, in Case No. CR-2002-92 for the Felony offense of: BURGLARY.
- 2) On or about the 6th day of January, 2004, a judgment of guilty was entered in the State of Idaho, County of Boundary, in Case No. CR-2003-677 for the Felony offense of: POSSESSION OF A CONTROLLED SUBSTANCE.

All of which is contrary to the form, force and effect of the statute in such case made and provided and against the peace and dignity of the People of the State of Idaho.

WHEREFORE, Complainant prays that the Defendant be dealt with according to law.

DATED this 17th day of March, 2010.



SHANE GREENBANK,
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I hereby certify that on the 12 day of March, 2010, I caused to be served a true and correct copy of the foregoing document as addressed to the following:

Original – Court File

L. Payne

~~Janet Whitney~~

~~Chief Deputy Public Defender~~

Hand Delivered

Attorney for A.

SG 

LINDA J. PAYNE
ATTORNEY AT LAW
P.O. BOX 1017
COEUR D'ALENE, IDAHO 83816
(208) 665-1303; 255-7555
(208) 667-8292 FAX
ISB #6222

STATE OF IDAHO
COUNTY OF BONNER
JUDICIAL DISTRICT

2010 MAR 17 P 1:54

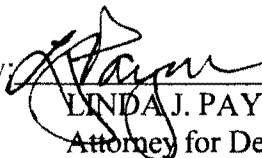
MARIE SCOTT
CLERK DISTRICT COURT
DEPUTY

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER**

STATE OF IDAHO,)	
	)	CASE NO. CR-2010-1014
Plaintiff,	)	FEL
)	
vs.	)	MOTION TO DISQUALIFY
	)	PURSUANT TO I.C.R. 25
RANDY PAUL KOIVU,)	
)	
Defendant.)	
_____)	

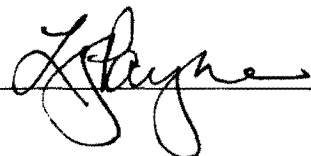
COMES NOW the defendant, RANDY PAUL KOIVU, by and through the undersigned attorney, pursuant to Idaho Criminal Rule 25, and hereby moves the Court for an Order disqualifying the Honorable Steve Verby in this matter. This motion is not made to hinder, delay or obstruct the administration of justice.

DATED this 17 day of March, 2010.

By: 
LINDA J. PAYNE
Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was personally served by placing a true copy in the Courthouse mailbox on the 17 day of March, 2010, addressed to:
Bonner County Prosecutor

By: 

STATE OF IDAHO
COUNTY OF BONNER
JUDICIAL DISTRICT

2010 MAR 18 P 1:24

MARIE SCOTT
CLERK DISTRICT COURT
DEPUTY

BONNER COUNTY PROSECUTING ATTORNEY
SHANE GREENBANK (ISB #7845)
127 S. First Avenue
Sandpoint ID 83864
(208) 263-6714
(208) 263-6726 (Fax)

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER**

STATE OF IDAHO,)
Plaintiff,)
vs.)
RANDY PAUL KOIVU,)
Defendant.)

CASE NO.: CR-2010-1014

**MOTION FOR DISQUALIFICATION
WITHOUT CAUSE PURSUANT TO
IDAHO CRIMINAL RULE 25(a)**

COMES NOW the Office of the Prosecuting Attorney and pursuant to Idaho Criminal Rule 25(a) hereby moves the Court to Disqualify the Honorable John Mitchell, District Judge in the above entitled matter.

DATED this 17 day of March, 2010.

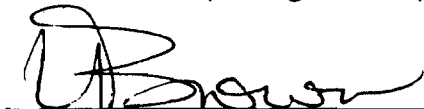

SHANE GREENBANK,
Deputy Prosecuting Attorney

CERTIFICATE OF MAILING

I hereby certify that on the 18th day of March, 2010, I caused, to be served, a true and correct copy of the foregoing document as addressed to:

Linda Payne – fax'd

Attorney at Law
P.O. Box 1017
Coeur d'Alene, ID 83816-1017



Legal Assistant

Judge Mitchell – fax'd

District Judge
P.O. Box 9000
Coeur d'Alene, ID 83816-9000

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DIST.

2010 MAR 19 A 10:32

MARIE SCOTT
CLERK DISTRICT COURT
DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

STATE OF IDAHO,)
Plaintiff,)
vs.)
RANDY PAUL KOIVU,)
Defendant.)

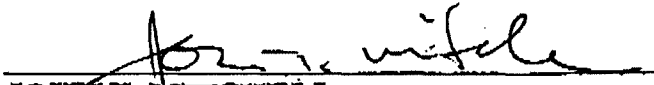
CASE NO.: CR-2010-1014

ORDER FOR DISQUALIFICATION
WITHOUT CAUSE PURSUANT TO
IDAHO CRIMINAL RULE 25(a)

UPON motion filed pursuant to I.C.R. 25(a), the undersigned District Judge now
disqualifies himself.

IT IS HEREBY ORDERED that the Honorable Judge John T. Mitchell is
disqualified from presiding over all proceedings in this matter.

DATED this 19th day of March, 2010.


JOHN T. MITCHELL
DISTRICT COURT JUDGE

CERTIFICATE OF MAILING

I hereby certify that on the 19 day of March, 2010, I caused, to be served, a true and correct copy of the foregoing document as addressed to:

Shane Greenbank

Deputy Prosecuting Attorney

Courthouse mailbox

Sandpoint, ID

Faxed 263-6601

Linda Payne

Attorney at Law

P.O. Box 1017

Coeur d'Alene, ID 83816-1017

Faxed 208-667-8292

L. Apple
Deputy Clerk

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DIST.

2010 MAR 22 P 4:52

MARIE SCOTT
CLERK DISTRICT COURT
cm
DEPUTY

LINDA J. PAYNE
ATTORNEY AT LAW
P.O. BOX 1017
COEUR D'ALENE, IDAHO 83816
(208) 665-1303; 255-7555
(208) 667-8292 FAX
ISB #6222

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER**

STATE OF IDAHO,)	
	)	CASE NO. CR-2010-1014
Plaintiff,	)	FEL
)	
vs.	)	ORDER DISQUALIFYING JUDGE
)	
RANDY PAUL KOIVU,)	
)	
Defendant.)	
)	

The Court having before it the Motion to Disqualify, ~~and good cause appearing~~, now,
therefore

IT IS HEREBY ORDERED that the Honorable Steve Verby is disqualified from
presiding over all proceedings in this matter.

DATED this 22nd day of March, 2010.

Steve Verby
STEVE VERBY, DISTRICT JUDGE

CLERK'S CERTIFICATE

I hereby certify that a true and correct copy of the foregoing was personally served by placing a
copy of the same via courthouse mail on the 23rd day of March, 2010, addressed to:

Linda J. Payne
Bonner County Prosecutor
Judge Mitchell via fax 446-1132

Cherie Moore
Deputy Clerk

STATE OF IDAHO
 COUNTY OF BONNER
 FIRST JUDICIAL DIST.
 IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

STATE OF IDAHO,

Plaintiff,

Vs.

RANDY PAUL KOIVU,

Defendant.

)
)
)
)
)
)
)
)
)
)

CASE NO CR 2010-1014

ORDER OF REASSIGNMENT

2010 MAR 29 A 11:51

MARIE SCOTT
 CLERK DISTRICT COURT
 DEPUTY

The Honorable Steve Verby, having been disqualified pursuant to ICR 25(a) now,
 therefore,

IT IS HEREBY ORDERED that the above matter is reassigned to the Honorable
 Benjamin R. Simpson, District Judge, for the disposition of any pending and further
 proceedings.

IT IS FURTHER ORDERED that the following alternate judges are hereby assigned to
 preside in this case: Charles Hosack, Fred M. Gibler, Lansing Haynes, John P. Luster and
 George R. Reinhardt, III.

DATED this 29 day of March, 2010.

John T. Mitchell
 JOHN T. MITCHELL
 Administrative District Judge

CERTIFICATE OF MAILING

I hereby certify that on the 29 day of March, 2010, a true and correct copy of the
 foregoing was sent via facsimile, to the following:

Shane Greenbank - Faxed

Linda Payne - faxed

208.667.8292

CLERK OF THE DISTRICT COURT

By *Linda Payne*
 Deputy Clerk

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

COURT MINUTES

JUDGE: BENJAMIN R. SIMPSON CASE NO. CR-2010-1014
REPORTER: JOANN SCHALLER DATE: 4-26-10 TIME: 3:30 P.M.
CLERK: LINDA OPPELT COURTROOM 1
DIVISION: DISTRICT

STATE OF IDAHO vs RANDY PAUL KOIVU

Plaintiff / Petitioner

Defendant / Respondent

Atty: SHANE GREENBANK

Atty: LINDA PAYNE

SUBJECT OF PROCEEDINGS ARRAIGNMENT

INDEX	SPEAKER	PHASE OF CASE
3:55	J	Calls Case
		Present: SHANE GREENBANK, DEFENDANT, LINDA PAYNE
	J	CHARGED WITH POSSESSION OF METHAMPHETAMINE AND HABITUAL OFFENDER. PLEA?
	LP	NOT GUILTY.
		WARRANT WAS ISSUED OUT OF BOUNDARY COUNTY BUT PICKED UP HERE. WARRANT WAS ISSUED WITHOUT JURISDICTION. THE STATE FILED A MOTION TO DISMISS IN THAT CASE. IF SIGNED THEN I WOULD FILE A MOTION TO SUPPRESS.
	J	SET FOR PRETRIAL AND JURY?
	LP	STATUS CONFERENCE.
	J	SET JUNE 28 TH .
		ENTER NOT GUILTY PLEA.
		SET FOR STATUS CONFERENCE FOR JUNE 28 TH .
3:58		END

-32-

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER**

COURT MINUTES

JUDGE: BENJAMIN R SIMPSON **CASE NO.** CR-2010-1014
REPORTER: JOANN SCHALLER **DATE:** JUN 28 2010 **TIME:** 1:30 PM
CLERK: SUSAN AYERLE **CRTRM:** 1
DIVISION: DISTRICT

STATE OF IDAHO

vs

RANDY PAUL KOIVU

Plaintiff / Petitioner

Defendant / Respondent

Atty: SHANE GREENBANK

Atty: LINDA PAYNE

**SUBJECT OF PROCEEDINGS
CHARGE**

STATUS CONFERENCE

INDEX	SPEAKER	PHASE OF CASE
221	J	Calls Case
		Present: DEF WITH LINDA PAYNE; SHANE GREENBANK FOR STATE
	J	ARRAIGNMENT LAST WEEK; LAST MONTH BEING ARRAIGNED TODAY
	LP	NO, HAS BEEN ARRAIGNED ISSUE IN THIS CASE, JUDGE VERBY ISSUED WARRANT FOR HIS ARREST ON CASE HE HAD ALREADY TOPPED OUT HIS PRISON TIME AS A RESULT OF THAT WARRANT, CLIENT ARRESTED STATE GOING TO DO RESEARCH SEE IF DISMISS
	SG	PREFERENCE WOULD BE HAVE REVIEWED THE ISSUE WOULD LIKE THE OPPORTUNITY TO BRIEF AND ARGUE; ANTICIPATE AN HOURLY TO ARGUE
	J	SET IN THE ORDINARY COURSE
	LP	STATE WILL NOT OBJECT TO UNTIMELY MOTION TO SUPPRESS
	J	FUTURE COURSE OF SETTING HEARINGS
224	J	RESET ORDINARY COURSE
224		END

-33-

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DIST.

2010 JUL 20 A 11:08

MARIL SCOTT
CLERK DISTRICT COURT
DEPUTY

LINDA J. PAYNE
Attorney at Law
P.O. Box 1017
Coeur d'Alene ID 83816-1017
(208) 665-1303; 255-7555
(208) 667-8292 FAX
ISB #6222

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

STATE OF IDAHO,)	
	)	CASE NO. CR 2010-1014
Plaintiff,)	
	)	WAIVER OF SPEEDY
vs.	)	TRIAL
)	
RANDY P. KOIVU,)	
)	
Defendant.)	

I, the above-named defendant, RANDY P. KOIVU, have talked with my attorney, Linda J. Payne, about my constitutional and statutory rights to a speedy trial. A speedy trial means that I must be brought to trial within six months of the entry of my not guilty plea, or the matter may be dismissed. I am not in custody on this matter. I understand that I retain my right to have a speedy trial in the felony matter, the six month date beginning on the date the Information was filed. Having this right and these facts in mind, I hereby voluntarily and intelligently waive my right to a speedy trial in the above-entitled matter.

DATED this 7-20-2010 day of July, 2010.

Randy Koivu

RANDY P. KOIVU

CERTIFICATE OF MAILING

I hereby certify that on the 20 day of July, 2010, I caused a true and correct copy of the foregoing document to be served upon the following person in the following manner:

Bonner County prosecuting Attorney via fax

Judge Verby's Chambers
for Linda Q.
263-0896

Judge Simpson Case

By: L. Payne

From: BONNER COUNTY PROSECUTOR

12082836725

5586 0N7W1E: E 101070 0Z 100170W 1 P 0008

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DIST.

2010 JUL 21 A 9:02

MARIE STUTT
CLERK DISTRICT COURT

DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

STATE OF IDAHO,

Plaintiff,

CASE NO. CR-2010-1014

vs.

ORDER VACATING
STATUS CONFERENCE

RANDY PAUL KOIVU,

Defendant.

Pursuant to Stipulation to Vacate Status Conference filed herein;

IT IS HEREBY ORDERED that the Status Conference currently scheduled for
July 27, 2010, at 9:00 a.m. is VACATED.DATED this 20 day of July, 2010.
DISTRICT COURT JUDGECERTIFICATE OF MAILINGI hereby certify that on the 21 day of July, 2010, I caused, to be served, a true
and correct copy of the foregoing document as addressed to:☒ Shane Greenbank, Deputy Prosecuting Attorney
Prosecutor's Office
Fax: 208-263-0601☒ Linda Payne
Attorney for Defendant
Fax: 208.667.8292
DEPUTY CLERK

ORDER TO CONTINUE - 1

ORIGINAL

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DISTRICT

2010 AUG 19 A 9:51

SHANE SCOTT
CLERK DISTRICT COURT
cm
DEPUTY

BONNER COUNTY PROSECUTING ATTORNEY

127 S. First Avenue
Sandpoint, ID 83864
(208) 263-6714
(208) 263-6726 (facsimile)

Assigned Prosecutor:
SHANE GREENBANK

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER**

STATE OF IDAHO

Plaintiff,

v.

RANDY PAUL KOIVU,

Defendant.

Case NO: **CR-2010-1014**

**STATE'S RESPONSE TO
DEFENDANT'S MOTION
TO SUPPRESS**

COMES NOW, Shane Greenbank, Deputy Prosecuting Attorney for Bonner County, State of Idaho, and hereby submits State's Response to Defendant's Motion to Suppress.

POSTURE

Counsel for the defendant has moved to suppress this matter on the following basis: Because the District Judge in Boundary County lacked jurisdiction to issue the Warrant of Attachment in CR-03-677, the Warrant was issued without probable cause; therefore, Koivu was unreasonably

seized/arrested in Bonner County in this matter; therefore, his person was unlawfully searched; therefore, the fruits of the search are subject to suppression through application of the exclusionary rule. The State argues that the evidence is not subject to suppression, and requests the defendant's motion be denied.

ISSUES PRESENTED

I. The Exclusionary Rule Would Not Apply In This Case Under The U.S. Constitution.

II. The Exclusionary Rule Should Not Apply In This Case Under The Idaho Constitution.

A. The Exclusionary Rule Under The Idaho Constitution Should Be Co-Extensive With The Exclusionary Rule Of The Fourth Amendment.

- 1. First Guzman Flaw:**
- 2. Second Guzman Flaw:**

B. Suppression Of Evidence Would Be Improper Under Idaho's Exclusionary Rule.

- 1. First Interest: "remedy for unreasonable Searches and Seizures"**
- 2. Second Interest: "encouraging thoroughness in the warrant application process"**
- 3. Third Interest: "preventing an 'additional constitutional violation'"**
- 4. Fourth Interest: "preserving judicial integrity"**

FACTS

The necessary facts are contained in the separately filed "Stipulations For Hearing on Defendant's Motion to Suppress".

ARGUMENT

I. **The Exclusionary Rule Would Not Apply In This Case Under The U.S. Constitution.**

Where the conduct of the officer is objectively reasonable, a defendant is not entitled to suppression of evidence.

In United States v. Leon, the United States Supreme Court addressed the question of whether suppression of evidence was appropriate where the police had relied upon a facially valid warrant. 468 U.S. 897 (1984). The court first noted that its precedents did not require exclusion of evidence as a remedy for all Fourth Amendment violations. Id. at 905-06 (citing Stone v. Powell, 428 U.S. 465 (1976)). Nor is suppression a right guaranteed to the individual, but is rather a judicially created remedy crafted for its deterrent effect. Id. at 906 (citing United States v. Calandra, 414 U.S. 338, 348 (1974)).

The Court further recognized that exclusion of evidence is a remedy that exacts “substantial social costs” as it impedes the truth finding processes of the judicial system, which often results in the guilty going free or receiving reduced sentences. Leon, 468 U.S. at 907. When applied to actions of law enforcement taken in good faith or where the violation was minor, “the magnitude of the benefit conferred on such guilty defendants offends basic concepts of the criminal justice system” and can generate disrespect for the law and the administration of justice. Leon, 468 U.S. at 907-08. Thus, the exclusionary rule should be applied only “where its remedial objectives are thought most efficaciously served.” Leon, 468 U.S. at 910, quoting Calandra, 414 U.S. at 348.

Assuming that the exclusionary rule ever has the desired effect of discouraging misconduct, “it cannot be expected, and should not be applied, to deter objectively reasonable law enforcement activity.” Leon, 468 U.S. at 918-19.

Application of the exclusionary rule “necessarily assumes that the police have engaged in willful, or at the very least negligent, conduct which has deprived the defendant of some right.” Leon, 468 U.S. at 919, quoting Michigan v. Tucker, 417 U.S. 433, 447 (1974). Once an officer has obtained a warrant, there is nothing more the officer can do to comply with the law and, therefore, “[p]enalizing the officer for the magistrate’s error, rather than his own, cannot logically contribute

to the deterrence of Fourth Amendment violations.” Leon, 468 U.S. at 921. Thus, the Court held, “the marginal or nonexistent benefits produced by suppressing evidence obtained in objectively reasonable reliance on a subsequently invalidated search warrant cannot justify the substantial costs of exclusion.” Leon, 468 U.S. at 922.

Exclusion of evidence from the execution of an invalid search warrant is only appropriate where the magistrate was misled by information the affiant knew was false or provided in reckless disregard for its truth; where the issuing magistrate “wholly abandoned his judicial role”; where probable cause was so lacking that “official belief in its existence [was] entirely unreasonable”; and where the warrant was so facially deficient that the executing officers could not reasonably presume that it was valid. Leon, 468 U.S. at 922-23.

Leon’s “good faith” analysis has been applied by the Court in other contexts as well. In Arizona v. Evans, 514 U.S. 1, 4 (1995), Evans was arrested on an outstanding warrant and his car searched incident to his arrest. It was later learned that the arrest warrant had been quashed 17 days previously, but the court failed to notify law enforcement, so the warrant still showed as valid in computer records. Id. at 4-5. Concluding that the officer’s conduct was reasonable, and the error was committed by court employees who would not be deterred from improper conduct by suppression of evidence, the Court concluded that suppression was not warranted under the Fourth Amendment. Id. at 14-16.

Recently the Court decided Herring v. United States, 129 S.Ct. 695, 698 (2009), in which Herring had been arrested on the basis of an arrest warrant that appeared in computer records maintained by law enforcement in a different county, but a search of the actual records after arrest showed the warrant had been recalled. The Court held that suppression of evidence of illegal possession of a controlled substance and a firearm was not required because the police conduct did not rise to the level of “deliberate, reckless, or grossly negligent conduct, or ... recurring or systemic negligence.” Id. at 702. Suppression is not called for, the Court held, when the police mistakes are the result of simple negligence rather than systemic errors or reckless disregard of constitutional requirements. Id. at 704.

In Illinois v. Krull, 480 U.S. 340, 342-44 (1987), a police officer inspected the yard and records of a licensed dealer in automotive parts and scrap pursuant to an Illinois statute allowing such searches, and ultimately arrested three people for possession of stolen cars. The Illinois statute in question was struck down as unconstitutional by a federal court the day after the search. Id. at 344. Applying the reasoning of Leon, the Court concluded that the error in that case was the Illinois legislature's act of passing an unconstitutional statute, and that there would be no deterrent effect to be gained by suppression. Id. at 349-53. The Court held that the officer's reliance on the statute was objectively reasonable; therefore the exclusionary rule did not apply. Id. at 356-60.

The analysis of these cases applies equally as well in the case at hand. In this case, Deputies Martin and Deal acted entirely reasonably under the law: They lawfully stopped the defendant for a speeding violation; they lawfully ran his information through dispatch; dispatch informed the deputies that there was an outstanding arrest warrant from Boundary County, and dispatch confirmed it; neither these deputies, nor any other law enforcement officers or prosecuting attorneys, had any involvement in procuring the warrant; the deputies arrested the defendant on the warrant; and the drugs were found during the booking process at the jail. Indeed, the deputies did precisely what they should do when they discover an outstanding arrest warrant – they made the arrest.

The essence, exclusionary rule of the Fourth Amendment is designed to deter “deliberate, reckless, or grossly negligent conduct.” Herring v. United States, 129 S.Ct. 695, 702 (2009); see also United States v. Leon, 468 U.S. 897 (1984). “To trigger the exclusionary rule, police conduct must be sufficiently deliberate that exclusion can meaningfully deter it, and sufficiently culpable that such deterrence is worth the price paid by the justice system.” Herring, 129 S.Ct. at 701-02. “[I]t cannot be expected, and should not be applied, to deter objectively reasonable law enforcement activity.” Leon, 468 U.S. at 918-19. Because Deputies Martin's and Deal's conduct were reasonable and in no way the product of “deliberate, reckless, or grossly negligent conduct, or ... recurring or systemic negligence,” Herring, 129 S.Ct. at 702, the exclusionary rule of the Fourth Amendment does not apply.

II. The Exclusionary Rule Should Not Apply In This Case Under The Idaho Constitution.

The state requests this Court to either adopt the exclusionary rule of the Fourth Amendment as applicable under Idaho's constitution or, in the alternative, to hold that exclusion would be improper under Idaho's standard on the facts of this case.

A. The Exclusionary Rule Under The Idaho Constitution Should Be Co-Extensive With The Exclusionary Rule Of The Fourth Amendment.

The state recognizes that the good faith exception to the exclusionary rule was rejected by a two justice¹ plurality of the Idaho Supreme Court in State v. Guzman, 122 Idaho 981 (1992), overruling State v. Prestwich, 116 Idaho 959 (1989). The state respectfully submits, however, that Guzman should be overruled, and the law as set forth in Prestwich reinstated. Precedents of the Idaho Supreme Court can, and should, be overruled if it is manifestly wrong, has proven over time to be unjust or unwise, or overruling it is necessary to vindicate plain, obvious principles of law and remedy continued injustice. Houghland Farms, Inc. v. Johnson, 119 Idaho 72, 77 (1990). The Guzman opinion should be overruled because a review of its reasoning shows it to be manifestly wrong, and following persuasive reasoning of the United States Supreme Court would result in clarity and uniformity of the law and better meet the objectives of the exclusionary rule.

Justice Bistline, in writing for the court in Guzman, reasoned that Idaho had adopted the exclusionary rule at a time when the United States Supreme Court had not made the exclusionary rule mandatory upon the states, and that the exclusionary rule Idaho adopted was more comprehensive than the federal rule. Because Idaho's exclusionary rule was designed to protect broader interests than preventing police overreaching, the purpose the Guzman plurality felt was the sole underpinning of the exclusionary rule in Leon, the Court reasoned that

¹ In State v. Josephson, 123 Idaho 790 (1993), a unanimous court applied Guzman, holding that it applied retroactively, to reverse a district court's denial of suppression.

Idaho's history of application of the exclusionary rule was inconsistent with allowing a good faith exception. Guzman, 122 Idaho at 992-93.

The reasoning of the Guzman plurality is flawed for two reasons. First, a review of the Idaho cases upon which Justice Bistline relied does not support his conclusions. To the contrary, those cases clearly show that Idaho's exclusionary rule is co-extensive with the exclusionary rule as adopted and applied by the United States Supreme Court. Second, even assuming that the Idaho exclusionary rule serves the purposes of providing a remedy for unreasonable searches and seizures, deterring Fourth Amendment violation and protecting judicial integrity, the good faith exception as articulated in Leon is consistent with those purposes.

1. First Guzman Flaw:

A review of the authority relied upon by the Guzman plurality does not support its analysis or results. For example, the court first relied upon State v. Arregui, 44 Idaho 43, 254 P. 788 (1927), the case adopting the exclusionary rule for Idaho. However, the court in Arregui specifically relied upon United States Supreme Court authority in adopting the exclusionary rule. Arregui, 254 P. at 791. Furthermore, the court, quoting a passage from an Oklahoma court that it "would not attempt to improve," went so far as to say that the "guarantees of immunity from unreasonable searches and seizures" in the federal and state constitutions "are practically the same," and therefore "it follows without argument that the rule of evidence in the state courts, where like facts and principles of law are involved, **should conform to that settled by the court having supreme prestige and authority.**" Arregui, 254 P. at 791 (emphasis added), quoting Gore v. State, 218 P. 545, 547 (Ok.Cr.App. 1923). It is thus clear that the Idaho Supreme Court did not adopt an exclusionary rule for the Idaho Constitution different from that pronounced by the United States Supreme Court for the Fourth Amendment.

Nor are the other cases relied upon in Guzman indicative that the Idaho Supreme Court had ever adopted an exclusionary rule broader than that articulated by the United States Supreme Court. For example, in State v. Rauch,

99 Idaho 586 (1978), the court suppressed for failure to comply with the knock and announce statutes, relying heavily upon the “landmark case” of Ker v. California, 374 U.S. 23 (1963). The only mention of the Idaho Constitution occurs in the quote of a dissenting opinion. Rauch, 99 Idaho at 593, quoting State v. Anderson, 31 Idaho 514 (1918) (Morgan, J., dissenting). There is nothing in the opinion that would suggest that the exclusionary rule in Idaho is broader than its federal counterpart.

Likewise, in State v. LePage, 102 Idaho 387 (1981), cert denied 454 U.S. 1057 (1982), the court determined LePage’s right to counsel had been violated under both the federal and state constitutions. The part of the opinion relied upon by the Guzman court for the proposition that judicial integrity is a factor in exclusion is actually a quote from two United States Supreme Court cases. In response to a claim that the issue had not been preserved by proper objection below, the Court stated:

Finally, we are cognizant of the need to insure that the judiciary does function, and is perceived as functioning, in a manner consistent with the individual constitutional rights, **both state and federal**, of all who appear before the bar of justice. While the primary purpose of the exclusionary rule is undoubtedly to deter police misconduct, it is also true that at some point the courts must simply refuse to countenance certain behavior **on the part of law enforcement agencies**. “Courts . . . cannot and will not be made party to lawless invasions of the constitutional rights of citizens by permitting unhindered use of the fruits of such invasions.” Terry v. Ohio, 392 U.S. 1, 13, 88 S.Ct. 1868, 1875, 20 L.Ed.2d 889 (1968). While “the imperative of judicial integrity” Elkins v. United States, 364 U.S. 206, 222, 80 S.Ct. 1437, 1446, 4 L.Ed.2d 1669 (1960), may not be the primary reason for refusing to allow the use of unconstitutionally seized evidence at trial, it certainly requires us to exercise our discretion to review alleged errors that affect substantial rights and are “plain” in the sense that it is evident that a mistake has occurred. Accordingly, we turn to an examination of the merits of LePage’s claim.

LePage, 102 Idaho at 391-92 (emphasis added).

Thus, the part of the LePage opinion relied upon for the claim that Idaho’s exclusionary rule is broader than the federal one, and therefore cannot recognize a good faith exception, actually states quite the opposite. The court specifically

referenced to both federal and state rights, drawing no distinction between them. The court also stated that the primary purpose of the rule is deterring police conduct, and the secondary reasoning is that the courts cannot be made a party to “certain behavior on the part of **law enforcement agencies.**” This purpose is entirely consistent with a good faith exception as articulated in Leon. Finally, the Court does not rely upon Idaho authority for this proposition, but rather authority of the United States Supreme Court. Thus, nothing in the LePage decision indicates that the Idaho Supreme Court was adopting or articulating any rule different from its federal counterpart or inconsistent with the Leon good faith exception.

A review of the authority relied upon by the Guzman plurality shows that there is nothing in those cases indicating that Idaho’s exclusionary rule is any different than its federal counterpart. To the contrary, those cases show that the Idaho Supreme Court has consistently looked to the decisions of the United States Supreme Court in both adopting and defining the exclusionary rule in Idaho law. Because Guzman misinterpreted and misapplied Idaho law, it should be overruled, and the Idaho exclusionary rule be interpreted as coextensive with exclusion as required by the United States Supreme Court under the Fourth Amendment.

2. Second Guzman Flaw:

The second flaw of Guzman is its contention that the Leon good faith exception to the exclusionary rule is inimical to the values of exclusion unrelated to police deterrence. The plurality contended that Idaho’s exclusionary rule served the purposes of providing a remedy for unreasonable searches and seizures, deterring police misconduct, encouraging thoroughness in the warrant application process, preventing an “additional constitutional violation” by allowing consideration of the evidence, and preserving judicial integrity. Guzman, 122 Idaho at 993842 P.2d at 672. The United States Supreme Court persuasively addressed these concerns, explaining why they do not require suppression of evidence where the police have acted objectively reasonably.

The Leon Court did not, as implied in Guzman, reject remedial or other concerns in the exclusionary rule. Leon, 468 U.S. at 905-13. The Court started

its analysis of exclusion as a remedy by specifically noting that exclusion is a court-created – not a constitutionally mandated – remedy. Leon, 468 U.S. at 905-06. This remedy is sensitive to the costs it extracts, and is to be restricted to those areas “where its remedial objectives are thought most efficaciously served.” Leon, 468 U.S. at 906-08, quoting Calandra, 414 U.S. at 348. Indiscriminate application of the exclusionary rule, because of those costs, tends to generate, not prevent, disrespect for the law and the administration of justice. Leon, 468 U.S. at 908. Thus, the Court had previously found limitations on the exclusionary rule related to federal habeas corpus; grand jury proceedings; civil trials; where a particular defendant had no standing; in using the evidence for rebuttal; and refusing to adopt a “but for” standard for suppression. Leon, 468 U.S. at 909-11. A rule that does not require suppression of evidence where the police have acted objectively reasonably in obtaining and executing a warrant is thus consistent with the limited remedial and other purposes of the exclusionary rule. The Idaho courts have adopted the same limitations on Idaho’s exclusionary rule, implicitly recognizing the same balancing of the rule’s costs against its benefits.

The primary purpose of the exclusionary rule is to deter overzealous law enforcement officers from violating the rights of suspects. LePage, 102 Idaho at 391, 630 P.2d at 678. The Leon Court addressed other purposes for the exclusionary rule and found them inadequate to justify excluding evidence obtained by a police officer whose conduct was objectively reasonable in obtaining and executing a search warrant. Leon, 468 U.S. at 916, 921 n.22, 922. This authority and reasoning is persuasive, and should guide the Idaho courts in application of the exclusionary rule under the Idaho Constitution.

B. Suppression Of Evidence Would Be Improper Under Idaho’s Exclusionary Rule.

Even under the exclusionary rule of Guzman, suppression is not warranted in this case. As noted previously, in rejecting the good faith exception under the Idaho Constitution, the Guzman Court reasoned that Idaho’s exclusionary rule is more comprehensive than the federal rule. The Court stated that, in addition to deterring police misconduct, Idaho’s exclusionary rule also serves the purposes of

providing a remedy for unreasonable searches and seizures, encouraging thoroughness in the warrant application process, preventing an “additional constitutional violation” by allowing consideration of the evidence, and preserving judicial integrity. Guzman, 122 Idaho at 993, 842 P.2d at 672. Even assuming that Idaho has different constitutional interests in the exclusionary remedy than under the federal constitution, such additional interests do not justify suppression under situations similar to this one.

1. First Interest: “remedy for unreasonable Searches and Seizures”

The first interest identified by the court in Guzman was providing a remedy for unreasonable searches and seizures. In this case, the officer conducted a lawful traffic stop for speeding; dispatch informed the officer of the outstanding arrest warrant for the defendant driver; the officer lawfully arrested the defendant on the outstanding warrant; the defendant was lawfully searched when he was being booked into the jail; and the Methamphetamine that was found as a result of the search was lawful.

To suppress the fruits of the encounter in this case would thus provide a “remedy” where law enforcement officers acted well within the bounds of the law and where there has been not even a scintilla of unreasonable police conduct. Applying the exclusionary rule in this instance would “remedy” nothing, and instead do nothing more than work a “windfall” for a guilty criminal, further encourage his disrespect for the law, and that of other scofflaws. Indeed, “the magnitude of the benefit conferred on such guilty defendants offends basic concepts of the criminal justice system”. Leon, 468 U.S. at 907-08.

2. Second Interest: “encouraging thoroughness in the warrant application process”

The Guzman Court also identified encouraging thoroughness in the warrant application process as a justification for rejection the good faith exception. This justification has no applicability to situations like this one – where the officer arrested the defendant on an active arrest warrant, initiated and issued by the District Court, without law enforcement or prosecutorial

involvement or prompting. The officer was as "thorough" as the law expects him to be in such circumstances.

3. Third Interest: "preventing an 'additional constitutional violation'"

As a third justification for rejecting the good faith exception, the Guzman court identified an interest in preventing an "additional constitutional violation" by allowing consideration of the evidence. As argued above, the state submits that there was no constitutional violation in this case, as the officer arrested the defendant on an outstanding arrest warrant that law enforcement didn't have a hand in procuring.

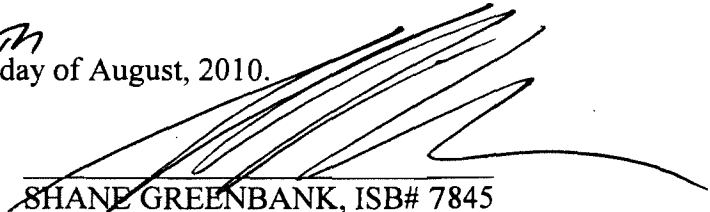
4. Fourth Interest: "preserving judicial integrity"

Finally, the Guzman court reasoned that Idaho's exclusionary rule serves the purpose of preserving judicial integrity. However, it does not preserve judicial integrity to forbid the introduction of relevant and competent evidence that was obtained in the absence of police overreaching. To the contrary, indiscriminate application of the exclusionary rule, where there has been no police misconduct, tends to generate, not prevent, disrespect for the law and the administration of justice. Leon, 468 U.S. at 908.

CONCLUSION

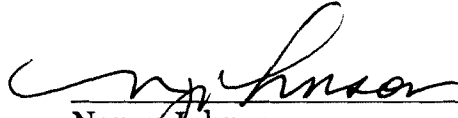
Because the interests identified by the Court in Guzman are not served in situations where, as here, there is no police misconduct, the State asks that Guzman either be limited strictly to the context of warrant applications or that it be overruled entirely. The State further requests that this Court hold, consistent with the United States Supreme Court's interpretation of the exclusionary rule, that suppression is not required in this case because the officer's conduct was reasonable.

RESPECTFULLY SUBMITTED this 19th day of August, 2010.


SHANE GREENBANK, ISB# 7845
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of August, 2010, a true and correct copy of the foregoing was caused to be faxed to Linda Payne at 208-667-8292.



Nancy Johnson
Legal Assistant

2010 SEP -1 P 3:12

STATE COURT
CLERK DISTRICT COURT

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT DEPUTY
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

STATE OF IDAHO, Plaintiff, vs. RANDY PAUL KOIVU, Defendant.	CASE NO. CR-2010-1014 MEMORANDUM DECISION AND ORDER ON DEFENDANT'S MOTION TO SUPPRESS
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PROCEDURAL AND FACTUAL HISTORY:

On January 6, 2004, the Defendant was found guilty of Possession of a Controlled Substance, in Boundary County. The court ordered 3 years fixed, with 2 years indeterminate, for a unified sentence of 5 years, but granted 4 years of probation. As a condition of probation, the Defendant was ordered to pay certain fines, costs and restitution. On October 31, 2005, the court revoked probation, relinquished jurisdiction and remanded the Defendant to the Department of Corrections for service of sentence.

Around July 2, 2009, the Defendant was discharged from prison. On October 1, 2009, a Deputy Clerk for Boundary County filed an Affidavit and Notice of Failure to Pay, alleging that Defendant was late in the amount of \$1,028.50 for fines, costs and public defender reimbursement. Notice of arrearages was sent to the Defendant. On December 1, 2009, the same

clerk filed a second Affidavit alleging outstanding fines and costs of \$588.50, which were to have been paid in full by July 6, 2006.

On December 8, 2009, Judge Verby signed a Warrant of Attachment directing any peace officer in the State of Idaho to arrest the Defendant and bring him before the court for contempt, less he post bail in the amount of \$588.50. Neither law enforcement nor prosecutors had any involvement in the generation of the clerk's affidavits, nor the issuance of the Warrant of Attachment.

On March 5, 2010, Bonner County Sheriff's Deputies lawfully pulled over the Defendant for speeding. There were two other male passengers in the car. The deputies lawfully obtained identifying information from the three occupants, and ran the information through dispatch for a records check. Dispatch returned that the Defendant and one of the other occupants had warrants in Boundary County.

The deputies reasonably relied on the validity of both confirmed warrants, and placed the Defendant and the other occupant under arrest and transported them to the Bonner County Jail. At the jail, the Defendant was searched prior to being placed in a holding cell. During that process, a baggie of Methamphetamine was discovered at Defendant's feet, and attributed to him. The Defendant was then arrested for felony Possession of a Controlled Substance (Methamphetamine), and this case was generated.

On April 8, 2010, the Prosecuting Attorney for Boundary County filed a motion to dismiss the Warrant of Attachment filed on December 8, 2009. On May 4, 2010, Judge Verby signed an order dismissing the Warrant of Attachment because "the Court lacked jurisdiction to issue the warrant on December 8, 2009."

The parties to this matter filed a Stipulation as to the facts herein on August 19, 2010, and subsequently filed a Stipulation to Forego Oral Argument on August 27, 2010.

The Court has reviewed the files and records herein and now being fully advised in the premises, and good cause appearing therefore,

MEMORANDUM DECISION:

In *State v. Guzman*, 122 Idaho 981, 842 P.2d 660 (1992), the district court determined that a search warrant was not supported by probable cause. However, under the "good faith" exception to the exclusionary rule, as set forth in *United States v. Leon*, 468 U.S. 897, 104 S.Ct. 3405, 82 L.Ed.2d 677 (1984) the district court admitted evidence found during execution of the warrant.

On appeal, the Idaho Supreme Court revisited the case in which the good faith exception was first adopted in Idaho, *State v. Prestwich*, 116 Idaho 959, 783 P.2d 298 (1989). In revisiting this opinion, the Court noted that the Court of Appeals in *Prestwich* adopted *Leon* based upon the fact that in *State v. Rice*, 109 Idaho 985, 712 P.2d 686 (Ct. App. 1985), *rev. den.* (1986), the Idaho Supreme Court denied petition for review. In *Rice*, the Court of Appeals held that, while the Court had concerns about *Leon*, "in light of our Supreme Court's admonition that the Idaho provision is to be construed consistently with the fourth amendment to the federal constitution, *State v. Cowen*, 104 Idaho 649, 650, 662 P.2d 230, 231 (1983), we are constrained [to follow the rule in *Leon*]." *Rice*, 109 Idaho at 989, 712 P.2d at 690.

Prestwich then followed the rule in *Rice*, predicated its decision on *Nash v. Overholser*, 114 Idaho 461, 757 P.2d 1180 (1988), in which Justice Johnson wrote:

In my opinion, the result of the failure of this Court to grant a petition for review is that the decision of the Court of Appeals becomes the law of this state with regard to any new principles of law announced in the decision.

MEMORANDUM DECISION and ORDER

Id., at 463-64, 757 P.2d at 1182-83. Thus, the *Leon* good faith exception was adopted by the Idaho Supreme Court by applying the "review denied rule". *Guzman*, 122 Idaho at 985, 842 P.2d at 665. Noting the difficulties and problems that the "review denied rule" caused, the *Guzman* Court then explicitly rejected the rule. *Id.* The Court explained that it was not necessarily placing its stamp of approval upon every Court of Appeals decision when it denied review:

There have been many instances when only two members of the Court voted to grant review, and also many instances where only one vote is cast to grant review. The various reasons for not granting review are not stated, but we have never considered that denying review meant any more than that for any one of various reasons there were not sufficient votes for reconsidering the decision of the Court of Appeals. One apparent reason for the rule of review denied was that, because we have considered an opinion in question and the briefs, an ensuing denial thereof puts our imprint upon the opinion. No one doubts the sincerity of those advocating that proposition, but the consensus of the Court is that such denial of review has no more meaning or effect than when the Supreme Court of the United States denies a petition for certiorari, the denial likely being attributable to the ever-increasing number of petitions. Of a necessity there must be a screening process.

Id. at 986, P.2d at 665. Of course, this does not mean that decisions of the Court of Appeals are not precedential to trial courts; rather, the Supreme Court "has never subscribed to the view that our decision to not review a decision emanating from that court was tantamount to an implicit holding that the new case law precedent emanating from the Court of Appeals became somehow binding on this Court." *Id.*

The Court went on to determine that the good faith exception in *Leon* did not merit adoption under Idaho Const. Art. 1, § 17. As the Court explained:

Although we do not doubt and do not challenge the United States Supreme Court's power to define the parameters of fourth amendment protection against unreasonable searches and seizures, it is equally important that the protections accorded under our state constitution not be diminished by a permanently pervading adoption of the federal good-faith exception.

Guzman, 122 Idaho at 989, 842 P.2d at 668. The Court extensively discussed its right to be instructed by the Fourth Amendment and its strictures, while still interpreting the Idaho

Constitution to provide greater protections. *Id.* at 987-88, 842 P.2d 666-67.

The *Guzman* Court then engaged in a lengthy analysis of Idaho State and Fourth Amendment jurisprudence, showing Idaho's shift into the exclusionary rule and the United States Supreme Court's shift from exclusion of evidence as a way of protecting citizens' Fourth Amendment rights, to exclusion as a mere deterrent of future unlawful police conduct. Thus, the *Guzman* court found *Leon* to be the "apex of this . . . view of the exclusionary rule" in announcing a "good faith" exception to the federal exclusionary rule. *Guzman*, 122 Idaho at 992, 842 P.2d at 992. The *Leon* Court found that as long as the officer acted in good faith reliance, there was nothing to deter, and thus no justification for exclusion. *Id.*

The *Guzman* Court took a less narrow view of the purpose of the exclusionary rule:

[W]hile we recognize[] that the deterrence of police misconduct was a purpose, we also recognized that judicial integrity mandated the exclusionary rule. *See also State v. Johnson*, 110 Idaho 516, 524-26, 716 P.2d 1288, 1296-98 (1986) (recognizing the different purposes of the state exclusionary rule). In sum the bases for our state exclusionary rule are the same as those set forth in *Mapp* and are inimical to the view taken by the Supreme Court in *Calandra* . . . Additionally, we believe the exclusionary rule is also properly directed toward the warrant issuing process itself. We agree with those commentators who have noted that "it is somewhat odd to suppose that the exclusionary rule was not designed to deter the issuance of invalid warrants."

Id. at 992-93, 842 P.2d at 671-72 (citation omitted). Thus, the *Guzman* court disagreed with the United States Supreme Court's finding that the sole policy which warrants suppression under exclusionary rule is deterrence of illegal police behavior:

We believe that the exclusionary rule should be applied in order to: 1) provide an effective remedy to persons who have been subjected to an unreasonable government search and/or seizure; 2) deter the police from acting unlawfully in obtaining evidence; 3) encourage thoroughness in the warrant issuing process; 4) avoid having the judiciary commit an additional constitutional violation by considering evidence which has been obtained through illegal means; and 5) preserve judicial integrity.

Id. at 993, 842 P.2d at 672. Lastly, the *Guzman* Court disagreed with *Leon*'s determination that the exclusionary rule needs to be limited because of "[t]he substantial social costs exacted by the

exclusionary rule for the vindication of Fourth Amendment rights . . ." *Guzman*, 122 Idaho at 994, 842 P.2d at 673, *quoting Leon*, 468 U.S. at 907, 104 S.Ct. at 3412. First, *Guzman* explains that a cost-benefit analysis is impossible, as there is "insufficient empirical data for the costs and benefits of a good faith exception to be accurately assessed." *Id.* at 994, 842 P.2d at 673, *quoting State v. Oakes*, 598 A.2d 119, 126 (Vt. 1991). The Court further explained that it is not the exclusionary rule that results in substantial costs; it is the Fourth Amendment:

Much of the criticism leveled at the exclusionary rule is misdirected; it is more properly directed at the Fourth Amendment itself The exclusionary rule places no limitations on the actions of the police. The fourth amendment does. The inevitable result of the Constitution's prohibition against unreasonable searches and seizures and its requirement that no warrants shall issue but upon probable cause is that police officers who obey its strictures will catch fewer criminals That is the price the framers anticipated and were willing to pay to ensure the sanctity of the person, home, and property against unrestrained governmental power.

Id. at 994-95, 842 P.2d at 673-74 (citation omitted).

The state does not pay a "cost" by being put in a worse position than before the constitutional violation; it is only forbidden to benefit from its error. As the state is only deprived of what it was not entitled to possess in the first place, to say the fourth amendment exacts a cost to the state is like saying that a thief pays for committing a theft when he is required to return what he stole.

Id. Lastly, the court explained,

The exclusionary rule unencumbered by the good faith exception provides incentives for the police department and the judiciary to take care that each warrant applied for and issued is in fact supported by probable cause. In addition to encouraging compliance with the constitutional requirement that no warrant shall issue but upon probable cause, it also lessens the chances that innocent citizens will have their homes broken into and ransacked by the police because of warrants issued upon incomplete or inaccurate information. We believe these are laudable effects of the exclusionary rule which appear to have gone unrecognized by the *Leon* majority.

Id. at 998, 842 P.2d at 677.

1. Whether the Exclusionary Rule Would Apply in this Case Under the U.S. Constitution

The State first argues that under the United States Constitution and Fourth Amendment

jurisprudence, the exclusionary rule should not apply in this case. It is true that under *Leon* and its progeny, a good faith exception exists, and would likely be applied to this case. Here, the officers acted reasonably when stopping the Defendant for a traffic violation and arresting him based upon an outstanding warrant. Under *Leon*, illegal police conduct would not be deterred by excluding the methamphetamine found as a result of the arrest, and therefore the State is correct that under federal law, the good faith exception would probably apply.

2. Whether the Exclusionary Rule Should Apply in this Case Under the Idaho Constitution?

a. Did *Guzman* Misapply and Misinterpret State and Federal Law?

The State first argues that the authority cited by *Guzman* does not support its analysis or result, beginning with *State v. Arregui*, 44 Idaho 43, 254 P. 788 (1927). The State argues that *Arregui* is based upon federal law, and explicitly champions conformity between state and federal law. Therefore, *Arregui* fails to hold that the state exclusionary rule adopted a rule different from the federal exclusionary rule.

Arregui is the case that first adopted the exclusionary rule in Idaho. This case is cited in *Guzman* for the proposition that Idaho adopted the exclusionary rule based upon its own constitution, and not United States Supreme Court mandate, in that the United States Supreme Court did not require states to adopt the exclusionary rule at the time of the *Arregui* opinion.

The State misinterprets the significance of *Guzman*'s citation to *Arregui*. What was significant in *Guzman* was that the *Arregui* Court adopted an exclusionary rule mirrored after the federal rule *not out of United State Constitutional or Supreme Court mandate, but of its own volition, under its own State Constitution*:

It should be emphasized that the fourth amendment exclusionary rule did not apply to the states when *Arregui* was decided and, thus, the exclusionary rule in Idaho became based wholly upon the state constitution. See *Wolf v. Colorado*, 338 U.S. 25, 69 S.Ct. 1359, 93 L.Ed. 1782 (1949) (the fourth amendment applies to the states, *but* the fourth amendment

exclusionary rule does not). Thus, Idaho has had an independent exclusionary rule based upon the state constitution for the past sixty-five years.

Guzman, 122 Idaho at 991, 842 P.2d at 670. This justification in *Guzman* has been affirmed by our Supreme Court:

Admittedly, we have previously found Article 1, § 17, in some instances, provides greater protection than the parallel provision in the Fourth Amendment of the U.S. Constitution. *See, e.g., . . . State v. Guzman . . .* However, in these cases, we provided greater protection to Idaho citizens based on the uniqueness of our state, our Constitution, and our long-standing jurisprudence.

State v. Donato, 135 Idaho 469, 472, 20 P.3d 5, 8 (2001). Even more harmful to the State's argument is the fact that *Guzman* reaffirms the interpretation of the federal Constitution at the time of *Arregui*, noting that the United States Supreme Court has since diverged from this interpretation:

In sum, the United States Supreme Court has abandoned the original purposes of the exclusionary rule as announced in *Weeks* and adopted by this Court in *Arregui*, in that the federal system has clearly repudiated any purpose behind the exclusionary rule other than that of a deterrent to illegal police behavior. Thus, the change in federal law has provided an impetus for a return by this Court to exclusive state analysis.

Guzman, 122 Idaho at 993, 842 P.2d at 672.

The State next argues that other cases cited in the opinion in *Guzman* also show that Idaho has not previously adopted an exclusionary rule broader than that articulated by the United States Supreme Court. However, the state mischaracterizes the purposes for which these cases are cited. *State v. Rauch*, 99 Idaho 586, 593, 586 P.2d 671, 678 (1978) is cited for its holding "that evidence illegally seized must be suppressed because to admit it would constitute an independent constitutional violation by the court in addition to the violation at the time of the illegal search." *Guzman*, 122 Idaho at 992, 842 P.2d at 671. It is not cited as authority that Idaho's exclusionary rule is historically broader than the federal rule. And, in fact, whether Idaho's exclusionary rule was historically broader is inapposite to the question of whether Idaho

must adopt federal exceptions to previously implemented remedies for search and seizure violations.

Lastly, the State herein uses *State v. LePage*, 102 Idaho 387, 391-92, 630 P.2d 674, 678-79 (1981), *cert denied*, 454 U.S. 1057, 102 S.Ct. 606, 70 L.Ed.2d 595 (1982) to show that *Guzman* improperly characterizes and relies on Idaho precedent for its holding that Idaho's exclusionary rule is broader than the federal rule. The State's argument is based on the fact that *LePage* cites federal cases in its holding, and *LePage* makes no distinction between state and federal rights. Thus, the State argues, "nothing in the *LePage* decision indicates that the Idaho Supreme Court was adopting or articulating any rule different from its federal counterpart or inconsistent with the *Leon* good faith exception."

LePage is cited in *Guzman*, stating "while we recognized that deterrence of police misconduct was a purpose, we also recognized that judicial integrity mandated the exclusionary rule." *Guzman*, 122 Idaho at 992, 842 P.2d at 671. While *LePage* does cite federal law, it also clearly states:

[W]e are cognizant of the need to insure that the judiciary does function, and is perceived as functioning, in a manner consistent with the individual constitutional rights, both state and federal, of all who appear before the bar of justice. While the primary purpose of the exclusionary rule is undoubtedly to deter police misconduct, it is also true that at some point the courts must simply refuse to countenance certain behavior on the part of law enforcement agencies.

LePage, 102 Idaho at 391, 630 P.2d at 678. Thus, *LePage* clearly stands for the proposition for which the *Guzman* Court cites to it. More telling and more importantly, however, *LePage*'s reliance on federal law, and *Guzman*'s reliance on *LePage*, cannot possibly show approval of the good faith exception in *Leon*, as the *Leon* opinion was not issued until three years later.

b. Whether *Leon* Addresses and Meets the Concerns Raised in *Guzman*

The State next argues that *Guzman* is incorrect in its assertion that the *Leon* good faith

exception is inimical to the values of exclusion unrelated to police deterrence. However, the State's argument confuses the issue. The State contends that *Leon* addressed the issues in *Guzman* and determined that such issues, while not unimportant or unfounded, did not require suppression when considered in a cost-benefit analysis. *Guzman*, however, states that this is exactly where *Leon* is incorrect, and that the Idaho Supreme Court thus exercised its right to independently scrutinize and evaluate claims under the Idaho Constitution.

Guzman extensively considered *Leon* and its progeny when determining whether the Idaho Constitution independently justified adoption of the good faith exception. *Guzman* held that *Leon*'s holding was only reached due to the Supreme Court's narrow justification for the exclusionary rule—deterrence of police misconduct. *Guzman*, 122 Idaho at 992, 842 P.2d at 671. Listing its five basic purposes for believing exclusion to be a proper remedy, the Court found that *Leon* was simply too narrow to accommodate the interests of the Idaho Constitution:

Additionally, we disagree with the basic premise of the *Leon* decision—that the decision whether to apply the exclusionary rule should be made by determining whether the goal of police deterrence would be furthered in the case at bar—because it totally fails to take into account the other purposes of our independent state exclusionary rule. We believe, regardless of whether the goal of police deterrence would be served, that the other purposes of the state exclusionary rule justify application of the rule in every case where evidence is seized pursuant to a warrant which is not supported by a showing of probable cause. In this regard, we are in agreement with some of the states which have rejected the good faith exception on state constitutional grounds.

Id., at 993, 842 P.2d at 672, citing *People v. Bigelow*, 66 N.Y.2d 417, 427, 488 N.E.2d 451, 458, 497 N.Y.S.2d 630 (1985); *State v. Carter*, 322 N.C. 709, 722, 370 S.E.2d 553, 561 (1988); *State v. Oakes*, 598 A.2d 119, 126 (Vt.1991); *State v. Marsala*, 216 Conn. 150, 167, 579 A.2d 58, 66 (1990). Thus, while *Leon* held that purposes other than police deterrence existed but were inadequate to justify the exclusionary rule under the federal constitution, *Guzman* held that these rationales *did* warrant exclusion under the State Constitution, thereby rejecting *Leon*'s cost-

benefit analysis.

Additionally, there are undertones in the State's argument that the Idaho Constitution should mirror federal law, because the federal courts have already decided the issue. However, "[i]t is by now beyond dispute that [the Idaho Supreme Court] is free to interpret the state constitution as more protective of the rights of Idaho citizens than the United States Supreme Court's interpretation of the federal constitution. *Guzman*, 122 Idaho at 987, 842 P.2d at 666, citing *Prune Yard Shopping Center v. Robins*, 447 U.S. 74, 80-82, 100 S.Ct. 2035, 2040-41, 64 L.Ed.2d 741 (1980). Therefore, the *Guzman* court did not misapply state and federal law, and diligently explained its deviance from the federal exclusion adopted in *Leon*.

3. Whether Suppression of Evidence Would be Improper Under Idaho's Exclusionary Rule

The State claims that none of the rationales set forth for the exclusionary rule in *Guzman* are present in this case, and therefore suppression is improper even under *Guzman*. As noted above, *Guzman* sets forth five justifications for its holding that no good faith exception to the exclusionary rule applies in Idaho:

1) provide an effective remedy to persons who have been subjected to an unreasonable government search and/or seizure; 2) deter the police from acting unlawfully in obtaining evidence; 3) encourage thoroughness in the warrant issuing process; 4) avoid having the judiciary commit an additional constitutional violation by considering evidence which has been obtained through illegal means; and 5) preserve judicial integrity.

Id. at 672, 842 P.2d at 993. Here, the search and seizure were not, in and of themselves, unreasonable. Nor is there any deterrent rationale served with regard to police conduct, in that officers acted lawfully and in good faith reliance upon the warrant. However, the other three interests would likely be served by suppression.

The warrant was invalid, and officers obtained evidence of a crime against the Defendant solely because the invalid warrant existed. As such, this is the exact situation in which *Guzman*

intended to interject the policies of ensuring thoroughness in the warrant issuing process (such as determining whether the court has jurisdiction to issue a warrant), and ensuring that the judiciary does not commit an additional constitutional violation by allowing the admission of evidence obtained as the direct result of an invalid warrant (here, the methamphetamine). Judicial integrity is also served: "[t]he criminal goes free, if he must, but it is the law that sets him free. Nothing can destroy a government more quickly than its failure to observe its own laws, or worse, its disregard of the charter of its own existence." *Mapp v. Ohio*, 367 U.S. 643, 659, 81 S.Ct. 1684, 1694, 6 L.Ed.2d 1081 (1961). *Guzman* is the law of this state. Therefore, a number of the *Guzman* rationales are met by suppressing the evidence obtained as a result of the invalid warrant herein.

While the State correctly concludes that the exclusionary rule would not apply under the U.S. Constitution, *Guzman* is clear in its holding that the Idaho Constitution cannot support a good faith exception because it encompasses and recognizes greater protections served by the exclusionary rule. *Guzman* reaches this authority based in part on state law and in part on federal law, showing Idaho's independence in modifying and creating state constitutional law, Idaho's adherence to Fourth Amendment jurisprudence in the early 20th Century, and Idaho's shift away from federal constitutional principles as the United States Supreme Court generated *Leon*'s good faith exception. Under Idaho law and the policies announced in *Guzman*, a number of interests are served to justify the Court's denial of *Leon*'s good faith exception.

ORDER:

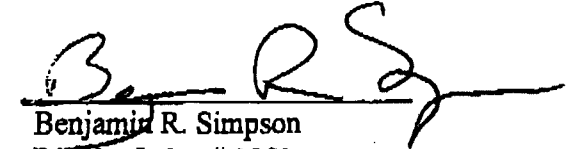
The court being fully advised in the premises and good cause appearing therefore,
IT IS HERBY ORDERED, as follows:

MEMORANDUM DECISION and ORDER

-61-

1. That Defendant's Motion to Suppress is hereby GRANTED.

DATED: The 31 day of Aug., 2010


Benjamin R. Simpson
District Judge # 1001

CERTIFICATE OF SERVICE

I hereby certify that on the 31 day of August, 2010, I caused, to be served, a true and correct copy of the foregoing document as addressed to:

Shane Greenbank, Deputy Prosecuting Attorney
Prosecutor's Office
Fax: 208-263-0601

Linda Payne
Attorney for Defendant
Fax: 208-667-8292


Deputy Clerk

LAWRENCE G. WASDEN
Attorney General
State of Idaho

STEPHEN A. BYWATER
Deputy Attorney General
Chief, Criminal Law Division

KENNETH K. JORGENSEN
Idaho State Bar # 4051
Deputy Attorney General
P. O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DIST

2010 SEP 17 P 3:16

MARIE SCOTT
CLERK DISTRICT COURT
41
DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR BONNER COUNTY

STATE OF IDAHO

Plaintiff-Appellant,

vs.

RANDY PAUL KOIVU,

Defendant-Respondent.

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Case No. CR-2010-1014

NOTICE OF APPEAL

TO: RANDY PAUL KOIVU, THE ABOVE-NAMED RESPONDENT,
LINDA PAYNE, BONNER COUNTY PUBLIC DEFENDER'S OFFICE, 1034 N.
THIRD STREET, STE. 9, COEUR D'ALENE, IDAHO 83814, AND THE CLERK
OF THE ABOVE-ENTITLED COURT:

NOTICE IS HEREBY GIVEN THAT:

1. The above-named appellant, State of Idaho, appeals against the
above-named respondent to the Idaho Supreme Court from the MEMORANDUM
DECISION AND ORDER ON DEFENDANT'S MOTION TO SUPPRESS, entered

NOTICE OF APPEAL - 1

-63-

in the above-entitled action on the 1st day of September 2010, The Honorable Benjamin R. Simpson presiding.

2. That the party has a right to appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders under and pursuant to Rule 11(c)(7), I.A.R.

3. Preliminary statement of the issue on appeal: Whether the district court erred in suppressing evidence found incident to arrest on warrant of attachment.

4. To undersigned's knowledge, no part of the record has been sealed.

5. The appellant requests the preparation of the following portions of the reporter's transcript: Appellant does not request any transcripts.

6. Appellant requests the normal clerk's record pursuant to Rule 28, I.A.R.

7. I certify:

(a) That a copy of this notice of appeal is being served on each reporter as named below at the address set out below:

JOANN SCHALLER
Court Reporter
Kootenai County District Court
PO Box 9000,
Coeur d'Alene, Idaho 83816-9000

VALERIE LARSON
Court Reporter
Bonner County District Court
215 S. 1st Avenue
Sandpoint, Idaho 83864

NOTICE OF APPEAL - 2

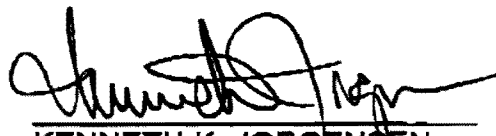
(b) That arrangements have been made with the Bonner County Prosecuting Attorney's Office which will be responsible for paying for the reporter's transcript;

(c) That the appellant is exempt from paying the estimated fee for the preparation of the record because the State of Idaho is the appellant (Idaho Code § 31-3212);

(d) That there is no appellate filing fee since this is an appeal in a criminal case (I.A.R. 23(a)(8));

(e) That service is being made upon all parties required to be served pursuant to Rule 20, I.A.R.

DATED this 17th day of September 2010.


KENNETH K. JORGENSEN
Deputy Attorney General
Attorney for the Appellant

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I have this 17th day of September 2010, caused a true and correct copy of the attached NOTICE OF APPEAL to be placed in the United States mail, postage prepaid, addressed to:

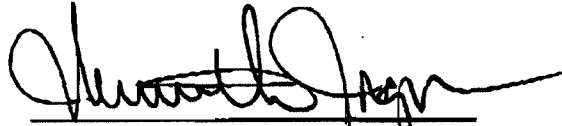
THE HONORABLE BENJAMIN R. SIMPSON
Kootenai County District Court
PO Box 9000,
Coeur d'Alene, Idaho 83816-9000

SHANE GREENBANK
Bonner County Prosecutor's Office
227 S. 1st Avenue
Sandpoint, Idaho 83864

LINDA PAYNE
Bonner County Public Defender's Office
1034 N. Third Street, STE. 9,
Coeur D'Alene, Idaho 83814

HAND DELIVERY

MR. STEPHEN W. KENYON
CLERK OF THE COURTS
P.O. Box 83720
Boise, Idaho 83720-0101


KENNETH K. JORGENSEN
Deputy Attorney General

KKJ/pm

NOTICE OF APPEAL - 4

-66-

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,

Plaintiff-Appellant,

vs

RANDY PAUL KOIVU,

Defendant-Respondent.

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SUPREME COURT DOCKET NO. 38106

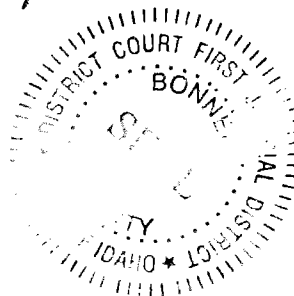
CLERK'S CERTIFICATE

I, Marie Scott, Clerk of the District Court of the First Judicial District of the State of Idaho, in and for the County of Bonner, do certify that the foregoing Record in this cause was compiled and bound under my direction and is a true, correct and complete Record of the pleadings and documents requested by Appellant Rule 28.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 14 day of December, 2010.

MARIE SCOTT
Clerk of the District Court

A. Phillips
Deputy Clerk



Clerk's Certificate

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO)	
	)	SUPREME COURT DOCKET NO. 38106
Plaintiff-Appellant,)	
	)	CLERK'S CERTIFICATE OF EXHIBITS
vs.)	
)	
RANDY PAUL KOIVU,)	
)	
<u>Defendant-Respondent.</u>)	

I, Marie Scott, Clerk of the District Court of the First Judicial District of the State of Idaho, in and for the County of Bonner, do hereby certify that the following is offered as the Clerk's exhibit on appeal:

Notice to Defendants filed March 9, 2010

Criminal and Driving Record Report filed March 12, 2010 (Confidential)

Authority in Support of Motion to Suppress filed July 9, 2010

Stipulation to Vacate Status Conference filed July 20, 2010

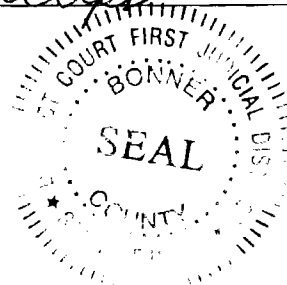
Stipulations for Hearing on Defendant's Motion to Suppress filed August 19, 2010

Stipulation to Forego Oral Argument on Defendant's Motion to Suppress filed August 30, 2010

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 14 day of December 2010.

Marie Scott
Clerk of the District Court

A. Phillips
Deputy Clerk



Certificate Of Exhibits

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,

Plaintiff-Appellant.

vs.

SHAWN THOMAS WHEELER,

Defendant-Respondent.

SUPREME COURT DOCKET NO. 38106

CERTIFICATE OF SERVICE

I, Marie Scott, Clerk of the District Court of the First Judicial District of the State of Idaho, in and for the County of Bonner, do hereby certify that I have personally served or mailed, by United Parcel Service, one copy of the CLERK'S RECORD to each of the Attorneys of Record in this cause as follows:

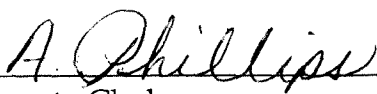
LAWRENCE WASDEN
ATTORNEY GENERAL
P.O. BOX 83720
BOISE, ID 83720-0010

MOLLY HUSKEY
STATE APPELLATE PUBLIC DEFENDER
P.O. BOX 83720
BOISE, ID 83720-0005

ATTORNEY FOR APPELLANT ATTORNEY FOR RESPONDENT

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this ____ day of December, 2010.

Marie Scott
Clerk of the District Court


Deputy Clerk

Certificate of Service

